

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF WAKE 11 CVS 16896
11 CVS 16940

MARGARET DICKSON, et al.,)
)
 Plaintiffs,)
 vs.)
ROBERT RUCHO, in his)
official capacity only as)
the Chairman of the North)
Carolina Senate)
Redistricting Committee,)
et al.,)
)
 Defendants.)

_____)
NORTH CAROLINA STATE)
CONFERENCE OF BRANCHES OF)
THE NAACP, et al.,)
)
 Plaintiffs,)
 vs.)
STATE OF NORTH CAROLINA,)
et al.,)
)
 Defendants.)
)

DEPOSITION OF
SENATOR ROBERT RUCHO

9:03 A.M.

FRIDAY, MAY 4, 2012

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STIPULATIONS

It is hereby stipulated and agreed between the parties to this action, through their respective counsel of record:

1. That the deposition of SENATOR ROBERT RUCHO may be taken on Friday, May 4, 2012, at 9:00 a.m. in Raleigh, NC, before Denise Myers, CSR 8340, RPR.

2. That the deposition shall be taken and used as permitted by the applicable North Carolina Rules of Civil Procedure.

3. That any objections of any party hereto as to notice of the taking of said deposition or as to the time or place thereof, or as to the competency of the person before whom the same shall be taken, are deemed to have been met.

4. That objections to questions and motions to strike answers need not be made during the taking of this deposition, but may be made for the first time during the progress of the trial of this case, or at any pretrial hearing held before any judge of competent jurisdiction for the purpose of ruling thereon, or any other hearing at which said deposition shall be used, except that objections to the form of the question must be made at the time

1 such question is asked or objection as to the form of
2 the question is waived.

3 5. That the witness reserves the right to read and
4 sign the transcript prior to it being sealed.

5 6. That the sealed original of the transcript shall
6 be mailed First Class Postage Paid or hand-delivered
7 to the party taking the deposition for preservation
8 and delivery to the Court if and when necessary.

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1 SENATOR ROBERT RUCHO,
2 having been first affirmed by the Certified Shorthand
3 Reporter and Notary Public to tell the truth, the whole
4 truth and nothing but the truth, testified as follows:

5 EXAMINATION

6 BY MR. SPEAS:

7 Q. Would you state your name for the record, please.

8 A. Robert Anthony Rucho.

9 Q. Thank you for coming today, Senator Rucho. You
10 were here at yesterday's deposition?

11 A. Yes, sir.

12 Q. And you heard the beginning of the deposition of
13 Representative Lewis?

14 A. Yes, sir.

15 Q. And I would tell you also that you're sworn today
16 to tell the truth, and if you don't understand my
17 questions you might not be able to tell the truth,
18 so if you don't understand my questions, please ask
19 me to clarify.

20 A. Understand.

21 Q. And you are in charge today, so we will go until
22 you want a break or until Mr. Farr gets -- needs a
23 break.

24 MR. FARR: Thank you.

25 BY MR. SPEAS:

1 **Q.** But you are essentially in charge. Mr. Peters is
2 irrelevant.

3 **A.** I understand.

4 **Q.** It's my understanding, Senator, that you have
5 chosen to waive your legislative privilege and to
6 come here today and answer questions with regard to
7 the process followed in adopting the redistricting
8 plans and the reasons for those plans. Am I
9 correct?

10 MR. FARR: Subject to the same conditions
11 and terms we stated yesterday for Representative
12 Lewis.

13 MR. SPEAS: Okay.

14 SENATOR RUCHO: Yes, sir.

15 BY MR. SPEAS:

16 **Q.** Tell me a little bit about your background.

17 **A.** Well, originally from Massachusetts, came to
18 North Carolina in '77. Prior to that, college at
19 Northeastern University in Boston, dental school at
20 the Medical College of Virginia in Richmond with a
21 year of residency at Memorial Hospital in
22 Worcester, two years of specialty in prosthodontics
23 at Boston University, started practice in '77,
24 practiced 33 years, retired now, and I'm not sure
25 it's retired as much as I'm having to work, and

1 then during that interim I got an MBA at UNCC.

2 **Q.** You came to Charlotte in '77?

3 **A.** Yes, sir.

4 **Q.** What brought you to Charlotte?

5 **A.** My specialty practice. I was invited to come here
6 and offer the services that my specialty delivered.

7 **Q.** All right. And so you practiced medicine,
8 dentistry, prosthodontics --

9 **A.** Yes, sir.

10 **Q.** -- for 33 years until 2010?

11 **A.** That's about right.

12 **Q.** You were active in Mecklenburg county politics
13 after coming, I believe.

14 **A.** Yes, sir. I did have a term on the Matthews town
15 board, a term on the Mecklenburg county commission
16 and then four terms as a state senator representing
17 one of the districts in Mecklenburg county. They
18 change numbers.

19 **Q.** When were you on the Matthews town board?

20 **A.** I'm thinking somewhere in the '80s. I can't
21 remember exactly what period.

22 **Q.** And when were you on the county commission?

23 **A.** Probably the middle to the latter part of the '80s.

24 **Q.** And one term or more than one term?

25 **A.** One term.

1 Q. And did any redistricting of the county commission
2 occur while you were on the board?

3 A. Actually, the Mecklenburg county went to -- the
4 year that I got elected on county commission, and I
5 wasn't involved in the redistricting. I was just
6 the first representative for the district
7 representation in Mecklenburg county when they went
8 from all at large to representing districts and at
9 large.

10 Q. And what years did you run for the Senate?

11 A. I believe I got elected in '96 and I served until
12 2004.

13 Q. Okay.

14 A. Eight years.

15 Q. All right. And then you were reelected in '06?

16 A. I was appointed to a term that Senator Pittman just
17 stepped aside as he ran for lieutenant governor,
18 reappointed to the Senate.

19 Q. And then you ran in '08?

20 A. Yes, sir.

21 Q. And then you ran in '10?

22 A. Yes, sir.

23 Q. During yesterday's deposition, you were taking
24 notes; is that correct?

25 A. Yes, sir.

1 Q. And the court reporter really will require you to
2 answer orally rather than nodding your head. It's
3 one of her requirements.

4 A. Okay.

5 Q. Did you bring those notes with you today?

6 A. No, sir.

7 Q. Do you still have those notes?

8 A. Yes, sir.

9 MR. SPEAS: Mr. Farr, we would like to
10 take a look at those notes, please.

11 MR. FARR: Well, what if he doesn't have
12 them? I mean --

13 MR. SPEAS: Not necessarily for today but
14 we'd like to take a look at them.

15 MR. FARR: Well, we'll take your request
16 under advisement.

17 MR. SPEAS: Okay. We will file a formal
18 request, then.

19 BY MR. SPEAS:

20 Q. Senator Rucho, you were appointed to chair the
21 Senate Redistricting Committee in February of 2011?

22 A. Yes, sir.

23 Q. And tell me the knowledge you brought to the table
24 that was relevant to the task of serving as chair
25 of the Redistricting Committee. Tell me what you

1 knew about North Carolina, what you knew about
2 Mecklenburg county, what you knew about the rest of
3 the state, what you knew about elections, election
4 results.

5 **A.** Well, I think part of the -- my background on that
6 was that I did work with the Senate. I was not on
7 the Redistricting Committee in 2001 in trying to
8 draw maps and participate in the redistricting
9 process. I did vote on a number of redistricting
10 votes in 2001, I imagine three, and then I wasn't
11 there at that point.

12 I have had a chance to visit many parts of
13 the state, so geographically I have an
14 understanding of that.

15 My background in dentistry and with an MBA
16 I tend to be a very good organizer, especially on
17 big tasks.

18 **Q.** Did you practice dentistry only in Mecklenburg or
19 did you practice in a larger area?

20 **A.** Only in Mecklenburg.

21 **Q.** All right. And you were familiar with politics in
22 Mecklenburg county?

23 **A.** Yes, sir.

24 **Q.** Been involved in it for 33 years or so?

25 **A.** Yes, sir.

1 Q. And you're familiar with the voting patterns in
2 Mecklenburg county?

3 A. As much as one could be.

4 Q. And you're familiar with the racial voting patterns
5 in Mecklenburg county?

6 A. I'm not an expert in any manner.

7 Q. Well, you're aware that African American candidates
8 have carried Mecklenburg county on a regular basis
9 over the years?

10 MR. FARR: Objection.

11 MR. PETERS: Objection.

12 SENATOR RUCHO: I am aware of that.

13 BY MR. SPEAS:

14 Q. And that's part of the knowledge you brought with
15 you to your role as chair of the Redistricting
16 Committee?

17 A. That plus a lot of other information that I've had
18 over the years organizing large projects.

19 Q. Now, let me explore with you -- Representative
20 Lewis testified yesterday. He was on the
21 Redistricting Committee of the RNC. Were you on
22 that same committee?

23 A. No, sir.

24 Q. Did you have any prior contact with the Republican
25 National Committee with regard to redistricting

1 before you began your service as chair of the

2 Redistricting Committee?

3 A. No, sir.

4 Q. Had you met Tom Hofeller before you became chair of

5 the Redistricting Committee?

6 A. In 2001, when he was here working on redistricting.

7 Q. Okay. For whom was he working in 2001?

8 A. He was working with the minority party.

9 Q. And do you know whether he had a contract with the
10 minority party or not?

11 A. I don't know that.

12 Q. What task did he perform for the minority party in
13 2001?

14 A. He assisted them in map drawing.

15 Q. And in drawing House maps, Senate maps,
16 Congressional maps?

17 A. I can only speak for the Senate.

18 Q. He helped in drawing Senate maps?

19 A. Yes, sir.

20 Q. And were those maps introduced in the legislature
21 in 2001? Do you remember?

22 A. No, I don't recall that.

23 Q. The legislative record would reflect that?

24 A. If they did it like we did it it will.

25 Q. And you are not aware whether Mr. Hofeller assisted

1 with the drawing of the House map?

2 A. I am not aware of that.

3 Q. And you're not aware whether he assisted with a
4 Congressional map?

5 A. I am not aware of that.

6 Q. And did you meet personally with Mr. Hofeller in
7 2001?

8 A. Just met him then and saw him in action. Like I
9 say, I was not on the Redistricting Committee so I
10 really had no authority other than trying to learn
11 the system.

12 Q. What other opportunities did you have to learn
13 about redistricting after 2001 and after you became
14 chair?

15 A. I'm not sure if I was named chair at the time or
16 not, but we did visit a couple of training programs
17 on redistricting, and one of them was in Maryland
18 with the entire staff of -- let's say the
19 redistricting staff that we had in the General
20 Assembly, and if there was anything -- I can't
21 remember anything else.

22 Q. Let's talk about the Maryland program. Who
23 sponsored that program? Do you recall?

24 A. It was one -- it was one of the -- and I don't
25 remember exactly, like the National Association of

1 Legislators or something like that. I'm not sure
2 of the organization to be candid with you.

3 **Q.** There's been some testimony in one of the earlier
4 depositions about a meeting somewhere in the
5 Washington DC area with some staff, including
6 Ms. Churchill attended some training session with
7 some legislators. Does that --

8 **A.** I was one of those legislators.

9 **Q.** All right. Did you get materials at that -- were
10 you provided materials at that meeting, training
11 session?

12 **A.** It was just like a regular continuing education
13 course so there was some material.

14 **Q.** Do you still have that material with you? Not
15 today.

16 **A.** I don't -- let me just say I doubt it.

17 **Q.** You're a very organized person?

18 **A.** Try to be.

19 **Q.** You keep a calendar?

20 **A.** As well as I can handle my iPhone.

21 **Q.** And how do you keep your calendar?

22 **A.** I don't understand your question.

23 **Q.** Do you have a paper calendar? Do you have an
24 electronic calendar?

25 **A.** I have an electronic calendar and I also have a

1 calendar at the office, my Senate office, so try to
2 coordinate it.

3 **Q.** And do you have your calendars from 2011?

4 **A.** My best understanding and recollection is the
5 electronic calendar, it erases itself after a
6 period of time so I likely don't.

7 **Q.** What about paper calendars?

8 **A.** Unless they have one at the office.

9 **Q.** And I believe that you have received a request for
10 production of documents. Did you look to see
11 whether or not you had calendars as a part of your
12 response to that document?

13 **A.** My staff complied with your request.

14 **Q.** Do you know whether they looked to see if you had
15 calendars, paper calendars?

16 **A.** Don't know.

17 **Q.** And who is your staff?

18 **A.** I have my legislative assistant, Helen Long, and a
19 research assistant, Paul Rucho.

20 **Q.** And is Paul Rucho related?

21 **A.** That is a brother.

22 **Q.** Okay. Does he live in Charlotte too?

23 **A.** No, sir. He lives here.

24 **Q.** Is he a dentist?

25 **A.** No, sir.

1 Q. Is he retired?

2 A. He wishes he was.

3 Q. All right. What was his occupation? What is his
4 occupation?

5 A. He has a master's degree, was in hospital
6 administration for a period of time and also in
7 retirement plans, but it's kind of a very strenuous
8 responsibility, and he takes care of a lot of my
9 research projects and things of that sort.

10 Q. Is he paid by the State?

11 A. Yes, sir.

12 Q. Does he keep a calendar?

13 A. I don't know.

14 Q. Did he work with you on redistricting?

15 A. I believe the chief clerk to the Redistricting
16 Committee was Helen Long, if I'm not mistaken, on
17 the Senate Redistricting Committee, and that is my
18 legislative assistant, but that's how it's normally
19 done. A chairman's legislative assistant is
20 basically the clerk to the committee that one
21 chairs.

22 Q. Now, did you ask to be appointed chair of the
23 redistricting -- Senate Redistricting Committee or
24 were you asked to serve?

25 A. No one asks for this job. Mr. Speas, Senator

1 Berger said "We've got a job to be done and we'd
2 like you to do it," and I accepted the
3 responsibility to do it.

4 **Q.** And there were other members of the Senate
5 Redistricting Committee?

6 **A.** Yes, sir.

7 **Q.** Did you participate with Senator Berger in
8 selecting those additional members of the Senate
9 Redistricting Committee?

10 **A.** Yes, sir.

11 **Q.** And what criteria did you apply in selecting them?

12 **A.** In naming people for the committee, we chose
13 leadership, we chose geography, we chose minorities
14 involved both in an urban and in a rural
15 environment. We tried to get a broad base across
16 the state geographical representation, and I think
17 that's -- and this was all designed to have a
18 transparent and open process in redistricting,
19 something novel for the state.

20 **Q.** And you thought those criteria were important in
21 selecting -- the member's geography is important,
22 minority representation is important, rural
23 representation is important, urban representation
24 is important, correct?

25 **A.** Yes, sir, they're all important.

1 Q. And transparency is important?

2 A. As always, sir.

3 Q. Now, there's a Senate Republican Caucus?

4 A. Yes, sir.

5 Q. And who's the chair of the Senate Republican
6 Caucus?

7 A. I think it's Senator Brown and/or Senator Berger.

8 Q. And how often did these Senate Republican Caucus
9 meet during the 2011 session?

10 A. We had at least weekly meetings during that period
11 of time.

12 Q. And as with the House, did the Senate Republican
13 Caucus hear from committee chairs about relevant
14 topics at these meetings?

15 A. Yes, sir.

16 Q. And did the chair of the Senate caucus call on you
17 as chair of the Senate Redistricting Committee to
18 give periodic reports about redistricting?

19 A. It was periodic reporting to show that we were
20 moving forward in preparing the database and all of
21 the necessary pre-activities before we had our
22 meeting, and then we also on the Senate floor made
23 a number of announcements so the entire Senate
24 would be aware of what's going on.

25 Q. And did the Senate caucus keep minutes?

1 **A.** No, sir.

2 **Q.** Are there audio recordings of the Senate caucus
3 meeting?

4 **A.** Not to my knowledge.

5 **Q.** And who would attend the Senate caucus meetings
6 other than Senate -- Republican senators?

7 **A.** Some of our key staff and then also periodically we
8 would have individuals with specific information to
9 share on the topic.

10 **Q.** Did Mr. Hofeller ever attend a Republican Senate
11 Caucus meeting?

12 **A.** No, sir.

13 **Q.** Did Mr. Farr ever attend a Republican Senate Caucus
14 meeting?

15 **A.** Not to my recollection, no, sir.

16 **Q.** Did Mr. Peters?

17 **A.** Not to my recollection.

18 **Q.** Did anybody from your staff, your redistricting
19 staff, attend Senate caucus meetings to talk about
20 redistricting? Your brother, Paul Rucho?

21 **A.** No.

22 **Q.** Helen Long?

23 **A.** No.

24 **Q.** Erika Churchill?

25 **A.** I was trying to think of Ms. Churchill and I don't

1 remember her ever coming to present any information
2 to the caucus.

3 Q. Gerry Cohen?

4 A. No, sir.

5 Q. Walker Reagan?

6 A. I have never seen Mr. Reagan at one of our
7 caucuses.

8 Q. At any point do you recall a map -- a proposed
9 Senate redistricting map being presented to the
10 Senate Republican Caucus?

11 A. During a caucus meeting?

12 Q. Yes.

13 A. Not that I recollect.

14 Q. Did Brent Woodcox come to these Senate caucus
15 meetings, Senate Republican Caucus meetings?

16 A. No, sir.

17 Q. At any point in the Senate Republican Caucus
18 meetings did you report to the Senate Republican
19 Caucus that Mr. Hofeller had been hired?

20 A. I don't recall ever making that statement.

21 Q. Okay. Let's talk a little bit about your role as
22 Senate redistricting chair. Would I be correct in
23 saying that as Senate redistricting chair you were
24 responsible for the Senate for the development of
25 the Senate redistricting plan?

1 **A.** Yes, sir.

2 **Q.** And would it be correct that as Senate
3 redistricting chair you along with Representative
4 Lewis were responsible for the development of the
5 Congressional plan?

6 **A.** We did it together, yes, sir.

7 **Q.** And with regard to the Congressional plan, were you
8 principally in charge or was Representative Lewis
9 principally in charge or was this truly a joint
10 undertaking?

11 **A.** It was a joint undertaking.

12 **Q.** Now, would it also be true that the Senate
13 Redistricting Committee met only periodically after
14 it was appointed in February of 2011?

15 MR. FARR: Objection.

16 MR. PETERS: Objection.

17 BY MR. SPEAS:

18 **Q.** Do you understand the word "periodically"?

19 **A.** No, sir. Try explaining that.

20 **Q.** Do you recall how many times the Senate
21 Redistricting Committee met between February and
22 July of 2011?

23 **A.** We had our first introductory meeting where we set
24 out what the policy was, a lot of information
25 regarding redistricting, the Legislator's Guide

1 which was to bring everybody hopefully, if they
2 read it, up to date not only on the committee but
3 also members of the Senate. It was a very valuable
4 document. And then we went into public hearings
5 and the public hearings took a lot of our time.

6 Each of our members were invited to
7 participate. Many of them were assigned to
8 locations other than wake or Charlotte or
9 elsewhere, and that was part of what I considered
10 part of their responsibilities of committee
11 meetings in gathering the information from the
12 public, from stakeholders.

13 We had a large outreach, as I wish it were
14 larger because we never did get participation from
15 the minority party and/or the black caucus even
16 reaching out and asking them for their feedback,
17 but I will say that, in essence, we had public
18 hearings every time of that committee.

19 **Q.** I understand, but the committee did not meet to do
20 business other than the business of public hearings
21 at any time between February and July; is that
22 correct?

23 **A.** I considered those public hearings the business of
24 the committee. We were gathering information and
25 understanding what our -- you know, what legal

1 criteria are in trying to draw fair and legal
2 districts.

3 **Q.** But here's my point: You were running the
4 redistricting process on the Senate side from
5 February until July; is that correct?

6 **A.** I was responsible to make sure it got done.

7 **Q.** Now, yesterday Representative Lewis testified that
8 the House maps were drawn by Mr. Hofeller. Would
9 it be correct that the Senate maps were also drawn
10 by Mr. Hofeller?

11 **A.** Mr. Hofeller was the chief architect in the sense
12 that there were other people engaged in the process
13 of drawing maps on the Maptitude software package.

14 **Q.** Let's talk about that. Who were those other
15 people?

16 **A.** John Morgan, who is a map drawer. Dale Oldham
17 assisted Mr. Hofeller and there was another person
18 by the name of Joel Raupe.

19 **Q.** Joel?

20 **A.** Raupe, R-A-U-P-E.

21 **Q.** Now, did the Senate Redistricting Committee have a
22 contract with John Morgan?

23 **A.** It wasn't the Senate Redistricting Committee. It
24 was the Legislative Services.

25 **Q.** Okay. And have you seen that contract?

1 **A.** Not that I can recollect.

2 **Q.** And by whom is John Morgan employed? Is he an
3 employee of some company? Is he an independent
4 contractor? Is he an employee of Mr. Farr's?

5 **A.** Mr. Speas, I am trying to remember exactly whether
6 he was paid directly from the LSO or through
7 Mr. Farr's office and I don't remember which way
8 that went, to be honest.

9 **Q.** And what did Mr. Morgan do?

10 **A.** He ended up assisting us in drawing maps by the
11 criteria that we set, same criteria that we gave to
12 Mr. Hofeller.

13 **Q.** Did he work for Mr. Hofeller or did he work
14 independently from Mr. Hofeller?

15 **A.** He did not work for Mr. Hofeller. It was an effort
16 by many -- all the people involved in trying to get
17 the maps drawn fair and legal.

18 **Q.** And who recommended the employment of Mr. Morgan?

19 **A.** I will say to you I'm trying to remember. I think
20 Mr. Hofeller may have recommended him. I can't
21 remember if Mr. Farr did, but we were, you know,
22 looking for a quality oriented individual that
23 could help us with those maps and that's the best I
24 can say on that answer to the question.

25 **Q.** But there are documents -- if he was employed by

1 the legislature, there will be documents at the

2 legislature reflecting that employment?

3 **A.** I assume so.

4 **Q.** And those documents will reflect how much money he

5 was paid?

6 **A.** Yes, sir.

7 **Q.** And those documents will reflect the work he was

8 contracted to do, presumably? If the state hires

9 somebody to do something --

10 **A.** Of course. Of course. I'm trying to remember if

11 that's how it was arranged or not. I don't

12 remember exactly how that occurred.

13 **Q.** So it's possible that Mr. Morgan was hired by

14 Mr. Farr's law firm?

15 **A.** I'm trying to remember how that worked. It was

16 very hectic at that time and I was trying to

17 remember how that worked out. I just don't

18 remember exactly if it was that -- if it was done

19 through Mr. Farr's firm or how Mr. Morgan was paid

20 at the point. I would need to think about that

21 further to be honest with you.

22 MR. FARR: I'd like to be helpful. Can we

23 take a very short break for me to talk to Senator

24 Rucho?

25 MR. SPEAS: Yes.

1 MR. FARR: We'll just step outside for one
2 moment.

3 MR. SPEAS: Before you do, let me just say
4 for the record I believe there are such contracts
5 that they would have been encompassed within the
6 motion -- the request for documents that we filed.

7 And I believe, Alec, I would turn to you,
8 since you are the counsel, and if there are such
9 documents we'd like to see them.

10 MR. FARR: If there are such documents,
11 they should have been produced and they will be
12 produced.

13 MR. SPEAS: Okay. Thank you.

14 (Brief Recess: 9:33 to 9:36 a.m.)

15 MR. FARR: Senator Rucho, have you had a
16 chance to reconsider the questions Mr. Speas asked
17 you about who paid Mr. Morgan for his services?

18 SENATOR RUCHO: Yes, sir.

19 MR. FARR: Can you explain that to
20 Mr. Speas, please.

21 SENATOR RUCHO: Mr. Speas, there was an
22 organization called Fair and Legal Redistricting,
23 and my recollection now is that Mr. Morgan, at
24 least to the best of my knowledge, was paid for by
25 that, not at state expense.

1 BY MR. SPEAS:

2 Q. Okay. And is Fair and Legal Redistricting an
3 organization with which Mr. Hofeller is affiliated?

4 A. No, sir.

5 Q. And do you know where Fair and Legal Redistricting
6 is located?

7 A. North Carolina.

8 Q. And do you know whether it's a for profit or
9 not-for-profit organization?

10 A. 501C. I assume it's nonprofit.

11 Q. Do you know whom is the principal in that
12 organization?

13 MR. FARR: Objection.

14 Do you know what he means by principal?

15 SENATOR RUCHO: Principal would be the
16 president. Is that what you're saying?

17 BY MR. SPEAS:

18 Q. The head man.

19 A. I know Don Mumford is the secretary-treasurer of
20 it, and I am trying to remember -- it's been a long
21 time -- as to who headed it up.

22 Q. So did John Morgan -- now that you've conferred
23 with your counsel and had your memory refresh --
24 work for Fair and Legal Redistricting?

25 A. Yes, sir.

1 Q. Did Fair and Legal Redistricting have any contracts
2 with the state?

3 A. No, sir.

4 Q. Now, is Mr. Morgan in Raleigh?

5 A. I believe Mr. Morgan -- I think he's out of DC, if
6 I'm not mistaken. I could be wrong. Could be
7 Virginia.

8 Q. He's not a North Carolinian?

9 A. No, sir.

10 Q. Neither is Mr. Hofeller?

11 A. I assume not.

12 Q. Now, Dale Oldham, he provided some map drawing
13 services, correct?

14 A. He is also an attorney and is capable of drawing
15 maps, yes, sir. He was engaged in certain maps,
16 not overall. Mr. Hofeller was our chief architect.

17 Q. And who engaged him?

18 MR. PETERS: Which "him" do you mean?

19 MR. SPEAS: Oldham.

20 SENATOR RUCHO: You know, I don't know the
21 answer to that question.

22 BY MR. SPEAS:

23 Q. So you don't know whether he was paid for, his
24 services, by state funds or not?

25 MR. FARR: He was not.

1 MR. SPEAS: Mr. Farr has testified he was
2 not.

3 SENATOR RUCHO: I'll say I believe he
4 wasn't. I don't know who paid his services.

5 BY MR. SPEAS:

6 Q. Do you know who paid for his services?

7 A. I think I just said I don't know who paid for his
8 services.

9 Q. I'm sorry. And you met Mr. Oldham at some point?

10 A. I met Mr. Oldham in 2001. He was here with
11 Mr. Hofeller.

12 Q. And you testified a moment ago that he was engaged
13 in some parts but not all parts of the
14 redistricting, and what I want to know is which
15 parts he was engaged in.

16 A. What I mean by some parts, he would be working on
17 specific parts of the map drawing.

18 Q. And do you recall which parts that was?

19 A. We had 50 districts. I'm not sure I can tell you
20 exactly what specific parts he was engaged in.

21 Q. Did he do work on the House plan, to your
22 knowledge?

23 A. I don't know.

24 Q. What about the Congressional plan?

25 A. I believe he was active in that too.

1 Q. So he provided services to the Redistricting
2 Committee or to Mr. Hofeller?

3 A. He worked with Mr. Hofeller.

4 Q. Did you ever provide specific directions to Oldham
5 as to how to draw maps?

6 A. Well, he knew how to draw maps without my help, I'm
7 sure, but as far as the criteria, it's the same
8 criteria that we gave to Mr. Hofeller and that was
9 following the Voting Rights Act, the Stephenson
10 case, the Strickland case and the criteria that we
11 outlined in our public statement.

12 Q. Now, Mr. Oldham was not serving as counsel to the
13 Redistricting Committee, was he?

14 A. Not to the Redistricting Committee, no, sir.

15 Q. Let me back up just a minute. John Morgan, you met
16 John Morgan at some point during the redistricting
17 process?

18 A. I met him when he was drawing some districts, yes,
19 sir.

20 Q. Where was he drawing the districts?

21 A. He drew the districts on Hillsborough Street.

22 Q. At the Brownstone?

23 A. No, sir.

24 Q. Where on Hillsborough Street?

25 A. At the Republican party headquarters on

1 Hillsborough Street.

2 Q. And you met Dale Oldham during this process,
3 physically personally met him?

4 A. I knew him ten years ago, but I --

5 Q. Did you work with Mr. Oldham directly? Did you
6 have meetings with Mr. Oldham?

7 A. We worked with him as we were trying to draw fair
8 and legal district maps.

9 Q. Where did you meet with Oldham?

10 A. At the Hillsborough location.

11 Q. The Republican headquarters?

12 A. Yes, sir.

13 Q. And let me talk a little bit about Joel Raupe.

14 A. Raupe.

15 Q. Well, let me back up. Pardon me.

16 Dale Oldham is not from North Carolina
17 either, is he?

18 A. I think from South Carolina.

19 Q. He's not licensed as a lawyer in North Carolina?

20 A. I don't know the answer to that question.

21 Q. All right. Joel -- I'm sorry.

22 A. Raupe.

23 Q. -- Raupe, who is he?

24 A. During the last redistricting process, Joel worked
25 with then minority leader Patrick Ballantine and is

1 a very bright fellow, understood computers very
2 well and trained himself into the software workings
3 of map drawing.

4 Q. So Joel Raupe's profession is what?

5 A. I don't know. I think he may have been unemployed
6 at the time when we talked with him, but he --

7 Q. What's his area of expertise, then?

8 A. I don't know what he has for a -- you know, what he
9 calls his profession.

10 Q. And is Mr. Raupe a North Carolinian?

11 A. Yes, sir.

12 Q. Where does he live?

13 A. I think in the eastern part of the state, but I'm
14 not sure of the exact location.

15 Q. And who paid Mr. Raupe to work with --

16 A. That was the Fair and Legal Redistricting.

17 Q. And did you have meetings with Mr. Raupe during the
18 redistricting process?

19 A. Yes, sir.

20 Q. And where did those meetings take place?

21 A. At the Hillsborough Street location.

22 Q. The Republican party headquarters?

23 A. That's correct.

24 Q. Now, other than Mr. Morgan and Mr. Oldham and
25 Mr. Raupe, do you recall anyone else who worked

1 with Mr. Hofeller in drawing maps?

2 **A.** I think that's it to the extent of map drawing,
3 yes, sir.

4 **Q.** You met with Mr. Morgan and Mr. Oldham and
5 Mr. Raupe on one or more occasions during this
6 process, correct?

7 **A.** In the fabrication of the fair and legal maps, yes,
8 sir.

9 **Q.** Did you ever have e-mail communications with the
10 three of them, with any one of the three of them?

11 **A.** Not with Mr. Morgan. I don't recollect whether
12 there was any with Mr. Raupe and/or -- I just don't
13 remember.

14 **Q.** Of the three of these individuals, Mr. Morgan,
15 Mr. Oldham and Mr. Raupe, who worked most with
16 Mr. Hofeller?

17 **A.** Mr. Morgan was -- was in for a short period of time
18 to help us when there was a lot of work to get
19 accomplished.

20 Mr. Raupe worked -- in essence, did a lot
21 of the groundwork for I would use the analogy your
22 paralegal getting ready for the work being done by
23 the attorney.

24 **Q.** We may ask you later -- in fact, I believe from my
25 memory that some of the maps that Dr. Hofeller has

1 produced bear the name Joel Raupe. Do you remember
2 that?

3 **A.** I don't know that.

4 **Q.** And do you remember whether some of the maps may be
5 labeled John Morgan maps?

6 **A.** I don't know the answer to that question.

7 **Q.** Now, let me go back a little bit. Is it correct
8 that the Senate maps were drawn by Mr. Hofeller
9 with the assistance to one degree or another of
10 Mr. Morgan, Mr. Oldham and Mr. Raupe?

11 **A.** I would say that, yes, Mr. Hofeller has the overall
12 approval on it in regards to achieving what we
13 wanted to achieve by meeting the criteria that had
14 been established.

15 **Q.** And would it be correct that the Congressional maps
16 were drawn by Mr. Hofeller with the assistance of
17 Mr. Morgan, Mr. Oldham, Mr. Raupe to one degree or
18 another?

19 **A.** I know for sure that Mr. Oldham and Mr. Raupe
20 participated to some extent. I can't remember if
21 Mr. Morgan was strictly on the Senate maps or not
22 because he was just in for a short period of time
23 to help us meet a timeline.

24 **Q.** Now, Senator, yesterday Representative Lewis told
25 us -- and these are my words, not his -- that the

1 legislature had a machine that would convert these
2 maps into the words of an active General Assembly
3 and that machine let you down. Is that accurate?

4 MR. PETERS: Objection.

5 SENATOR RUCHO: I would say to you that my
6 understanding, and I'm far from being a computer
7 literate individual --

8 BY MR. SPEAS:

9 Q. Well, you're dealing with --

10 A. But apparently there was a computer code missing,
11 and when we had the maps which were accurate and
12 the stat packs that were accurate converted over to
13 a bill draft, the code omitted some Census blocks
14 on all the maps that were submitted to the
15 legislature, and under those circumstances the bill
16 draft did not depict what was actually there.

17 And I think, as I mentioned at some point,
18 it's like going and buying a piece of property and
19 we saw what we bought, it's everything there, but
20 the legal description wasn't accurate and then at
21 some point you go back and correct it. I'm sure
22 you know --

23 Q. Okay. So let me rephrase this, then, and I'll try
24 to be a little bit more sophisticated in my
25 terminology. These maps that were drawn by

1 Mr. Hofeller were converted by the legislature's
2 software into words that formed a bill that the
3 legislature voted on?

4 **A.** My understanding of the process was that the maps
5 that Dr. Hofeller had were submitted to ISD. They
6 were put into the system at which every map would
7 have done under those circumstances, and when we
8 voted on them on the floor or during committee and
9 on the floor, we basically had our maps which were
10 House, Senate -- well, in our case Senate and
11 Congress and then ultimately the House and --

12 MR. FARR: Wait.

13 SENATOR RUCHO: And the error occurred in
14 trying to draft the legal bill and that was because
15 of a computer glitch.

16 The ISD folks identified, as Representative
17 Lewis mentioned yesterday, when they found out the
18 problem, they found out -- we asked them to get to
19 the extent of it, how to solve it. They were able
20 to solve it, and then Mr. Cohen gave us a mechanism
21 on how to have the corrected bill that was
22 subsequently sent to Justice for their
23 pre-clearance.

24 BY MR. SPEAS:

25 **Q.** Okay. And let me try one more time. I'm just

1 interested in this: Hofeller drew maps, he gave
2 them to ISD, the maps, ISD used its software to
3 convert those maps into a bill that the legislature
4 could vote on?

5 **A.** From my level of understanding in the computer, the
6 maps were sent into ISD on the main computer frame,
7 and then once that's in there, that's when the
8 computer glitch occurred in the transfer to a bill
9 draft and that's -- I'm not sure I can explain it
10 any differently.

11 **Q.** And please realize you're dealing with someone who
12 knows less than you do about this.

13 **A.** I'm not sure, but okay.

14 **Q.** If I can try again, a map gets stuck in one side
15 and a bill comes out the other side; is that
16 correct?

17 **A.** Yes, sir, I think that's probably about as accurate
18 as I can describe it.

19 **Q.** And something happened in the machine and it didn't
20 come out like it was supposed to?

21 **A.** That's correct.

22 **Q.** And that happened with the Senate plan, the Senate
23 map, it happened with the House map and it happened
24 with the Congressional map?

25 **A.** It happened to all the maps, not just those three.

1 It happened to every map that was submitted by the
2 Senate and the minority party and from Senator
3 McKissick in the black caucus. The glitch was
4 consistent.

5 **Q.** It was a non-partisan glitch?

6 **A.** It surely was.

7 **Q.** Now, let's get back on little firmer ground, for
8 me, anyway. Representative Lewis testified
9 yesterday, I believe, that his committee -- that he
10 never provided any written criteria to Mr. Hofeller
11 to draw the House maps.

12 My question to you today is this: Did you
13 as chair of the Senate Redistricting Committee ever
14 provide any written criteria to Mr. Hofeller as to
15 how he was to draw the maps?

16 **A.** The written criteria were the press public
17 statements that we made.

18 **Q.** But just to clarify, there is no document anywhere
19 that says, "Dear Dr. Hofeller, these are the
20 criteria you are to apply in drawing the maps"?

21 **A.** To my knowledge, not from me there is no written
22 document to him, but what he told him clearly was
23 to follow the Stephenson criteria as harmonized
24 with the Voting Rights Act and including the
25 Strickland decision in formulating fair and legal

1 maps.

2 **Q.** Okay. So with regard to the Senate plan, the
3 criteria that you gave Mr. Hofeller are reflected
4 in the written statements that you and
5 Representative Lewis issued beginning June 17th; is
6 that correct?

7 **A.** The public statements that we made were the
8 criteria that we established so that we could, one,
9 draw fair and legal maps; two, get pre-clearance
10 from the Justice Department; and three, keep the
11 2012 election cycle on schedule, which is
12 exactly -- which were our goals and to this point
13 we've achieved our goals.

14 **Q.** Okay. So your first public statement was on
15 June 17th?

16 **A.** Correct.

17 **Q.** And Mr. Hofeller had been engaged in drawing maps
18 before then?

19 **A.** Yes. I'm assuming that's correct, yes, sir.

20 **Q.** And -- so, I mean, it dates earlier than June 17th.
21 He didn't know what you were going to write on
22 June 17th so how did he know what criteria to
23 apply?

24 **A.** Well, I mean, during that period of time we had our
25 public hearings. We were evaluating what public

1 comments were made. We evaluated comments that
2 came from other stakeholders. We made a very
3 concerted effort to reach out to all the
4 stakeholders to get their input as we were
5 formulating the criteria that we would include or
6 utilize in drawing the maps. I'm sure there were
7 verbal descriptions to Mr. Hofeller --

8 Q. Okay. That's good.

9 A. -- to meet that criteria.

10 Q. Did Mr. Hofeller attend the public hearings?

11 A. Not to my knowledge.

12 Q. Did you attend all the public hearings?

13 A. I think I -- out of 67 I think I missed one, yes,
14 sir, if I'm not mistaken.

15 Q. At some point seems to me you must have met with
16 Mr. Hofeller and said, "Hofeller, here's the way I
17 want this done." Did that happen?

18 A. Well, I will say that Representative Lewis and I,
19 you know, worked diligently as we were preparing
20 for this responsibility to draw clear and legal
21 criteria that we wanted Mr. Hofeller to follow in
22 drawing those maps, and during the period of time
23 I'm sure there were opportunities we had to meet
24 with him to discuss those issues.

25 Q. Do you recall today sitting down on any occasion

1 with Mr. Hofeller and saying, "Mr. Hofeller, here's
2 what I want you to do"?

3 **A.** Probably on a number of occasions as we may have
4 been sitting down discussing those maps that we
5 were watching him draw.

6 **Q.** And do you have a specific recollection today of
7 any of those meetings?

8 **A.** As to specific dates, no.

9 **Q.** Do you have a specific recollection of where those
10 meetings might have occurred?

11 **A.** I know at least they occurred at the Hillsborough
12 location.

13 **Q.** The Republican headquarters?

14 **A.** Yes, sir.

15 **Q.** Did you sit down with Hofeller and say, "Hofeller,
16 all I want you to do is follow the law"? Is that
17 what you said to him?

18 **A.** Well, Mr. Hofeller is a very knowledgeable
19 individual, has been --

20 **Q.** But he's not a lawyer.

21 **A.** He is a knowledgeable individual, has been involved
22 in redistricting, you know, on many occasions, and
23 what we came up with were the criteria that I've
24 already elaborated plus what we had in the public
25 statement. We explained that this is what we would

1 expect from him and that's what we expected of our
2 maps.

3 **Q.** Pretend I'm Hofeller and just tell me what you
4 would want me to do.

5 **A.** I'll repeat again for you that, you know, the way
6 the law is understood by us that we would want
7 Mr. Hofeller to use the Stephenson criteria along
8 with harmonizing of the Voting Rights Act, to go
9 through the Whole County Provision requirements
10 that the Constitution of North Carolina expects us
11 to perform whenever they can best be done and
12 involve the Strickland criteria at the same time,
13 and by putting all of that together we believed we
14 would have maps that would meet the Department of
15 Justice pre-clearance approval, which it did do.

16 **Q.** So sitting here today in May of 2012, do you think
17 that you have accurately repeated the kind of
18 conversation you would have had with Hofeller about
19 what you wanted Hofeller to do?

20 **A.** I think maybe the only thing I might add to that,
21 which I just thought about, is that I'm sure not
22 only meeting those criteria but we would also ask
23 him that he would also try to keep the --
24 especially, in Congressional -- the VTDs whole
25 when, if possible, as long as he's abiding by the

1 legal requirements that needed to be addressed both
2 in the Congressional and I'll speak at this point
3 on the Senate map, but we had a consistent approach
4 on the map drawing throughout the entire process.

5 **Q.** Now, when you would meet with Hofeller, was anybody
6 else -- did you and Lewis meet with Hofeller or did
7 you meet with Hofeller by yourself? What do you
8 remember about that?

9 **A.** There were times we met together, times that we met
10 individually, say, for example, when I focused on
11 the Senate map or David focused on the House map
12 trying to get the job complete.

13 **Q.** On some of those occasions would Mr. Morgan be
14 there?

15 **A.** He was there at the period of time that we needed
16 him there.

17 **Q.** And some of the occasions Mr. Oldham was there?

18 **A.** He was also there at periods.

19 **Q.** And some of the occasions Mr. Raupe was there?

20 **A.** Yes, sir.

21 **Q.** Was Mr. Peters ever there?

22 **A.** No. No, sir.

23 **Q.** Mr. Farr?

24 **A.** Mr. Farr visited, but I don't think he was ever
25 engaged in any of the activity while we were there.

1 **Q.** Now, let me just switch for a moment to
2 Congressional. We've been talking about Senate,
3 but with regard to the Congressional maps, you
4 issued your public statement releasing the --
5 publicly releasing the Congressional maps I think
6 on July 1st.

7 **A.** I believe that's accurate.

8 **Q.** And that document is here, but that document laid
9 out the things you all wanted, you were expecting
10 with regard to the Congressional maps. Am I
11 correct?

12 **A.** Especially on the first drawing that we presented.

13 **Q.** And so sometime prior to July you sat down with
14 Hofeller, Lewis may have been there, probably was,
15 I take it from your testimony, and you said,
16 "Hofeller, this is what we want you to do"?

17 **A.** We outlined the criteria that we've discussed and,
18 as you well know, the criteria for Congressional
19 maps is different than the criteria that would be
20 for legislative maps.

21 **Q.** And might Morgan have been there, John Morgan?

22 **A.** Not at the point I was talking with Hofeller, I
23 don't believe.

24 **Q.** What about Oldham, might Oldham have been there?

25 **A.** He could have been there.

1 Q. Oldham used to work for the RNC, didn't he?

2 A. I guess. I don't know for a fact.

3 Q. He had a special interest in Congressional maps;
4 isn't that correct?

5 MR. FARR: Objection.

6 MR. SPEAS: Just asking a question.

7 SENATOR RUCHO: I don't know if he has a
8 special interest in that, sir.

9 BY MR. SPEAS:

10 Q. Okay. Mr. Raupe might have been there?

11 A. Yes, sir.

12 Q. Was anybody from the state Republican party staff
13 present at these meetings? You were meeting in
14 their building.

15 A. Yes. Well, it was very inexpensive space,
16 actually. Thank you. But there was -- to my
17 knowledge, there was never any time when Republican
18 party staff were engaged in that process.

19 Q. Now, is one of the things you told Hofeller about
20 the Senate plan "I want you to draw the VRA
21 districts first"?

22 A. Well, in drawing the Senate plan, yes, sir, that
23 was -- we -- you know, the good news is there was
24 the Stephenson decision which helped us set out a
25 roadmap of how to accomplish this task, and it in

1 my judgment is very -- it made the process a lot
2 simpler than what it could have been because it
3 went step-by-step, but the Voting Rights Act was
4 priority that needed to be blended or harmonized
5 with the Whole County Provisions that are required
6 under the North Carolina Constitution, and then
7 once that is done you move on to the next step
8 dealing with whole county, single county,
9 two-county groupings, three-county groupings.

10 But I guess the first step in the entire
11 process is actually having a map that actually
12 shows groupings of the state based on ideal
13 populations, and I'm sure you know what I'm
14 alluding to there.

15 **Q.** And at some point did Mr. Hofeller give you a map
16 with Senate groupings?

17 **A.** I don't recollect directly that Mr. Hofeller gave
18 that map. I know that was a nuts-and-bolts
19 counting job, and I think Mr. Raupe was engaged in
20 that at some point, but I can't be specific to say
21 that Mr. Hofeller gave us that map.

22 **Q.** Do you recall a conversation with Mr. Hofeller when
23 you talked about how many possible sets of
24 groupings could be drawn?

25 **A.** I'm not sure I understand your question.

1 Q. All right. That's a confusing question, and the
2 topic of groupings is one that confuses me even
3 today.

4 MR. FARR: You can call it clusters if it
5 makes it easier for you.

6 MR. SPEAS: Or pods, perhaps.

7 BY MR. SPEAS:

8 Q. Now, with regard to the VRA districts, did you tell
9 Hofeller, "Now, Hofeller, when you draw a VRA
10 district, it has to be at 50 percent plus one black
11 voting age population at a minimum"?

12 A. In our criteria that we've outlined on the public
13 statement, we consistently remained committed to
14 the law as it is written which included the VRA
15 harmonizing with the Strickland -- excuse me --
16 with the Stephenson criteria and then incorporating
17 Strickland, and all of that being said, it would be
18 a requirement to -- in a VRA district to have
19 50 percent plus.

20 Q. Plus one.

21 Now, with regard to the number of VRA
22 districts, did you tell Hofeller, "Now, Hofeller,
23 we want to get close to proportional population for
24 African American citizens in North Carolina and in
25 the Senate that means 10 of 50 seats"?

1 MR. PETERS: Objection.

2 SENATOR RUCHO: Based on the record that
3 we put together, and I think it was outlined in our
4 public statement which included testimony from a
5 number of people, including Ms. Earls, who I have a
6 great deal of respect for. I think she's a very
7 knowledgeable individual.

8 MR. SPEAS: She's real smart, isn't she?

9 MR. FARR: We disagree with her on just a
10 few things.

11 SENATOR RUCHO: But in formulating my
12 thoughts on criteria, I used a lot of her evidence
13 and testimony in determining, but under that
14 circumstance, you know, she said that we -- that,
15 quote, unquote, there was racial polarization in
16 the state that needed -- and then majority-minority
17 districts were important, and I believe in one of
18 her legal articles talked about the fact that there
19 were, let's say, not as many minority members in
20 the House and the Senate and under that
21 circumstance looked at the possibility of trying to
22 have a roughly proportional and equal opportunity
23 to elect -- to have the voters elect candidates of
24 their choice.

25 BY MR. SPEAS:

1 Q. And the black population of the state is a little
2 bit over 20 percent, so 20 percent of the 50 seats
3 in the Senate would be approximately 10?

4 A. Yes, sir.

5 Q. And you instructed Hofeller, "That's your goal,
6 10"?

7 A. With the caveat that there -- as is expected, that
8 when a cohesive and compact population existed to
9 allow that to be done.

10 Q. Now let's talk about the Whole County Provision of
11 the Constitution which was interpreted in
12 Stephenson.

13 Did you tell Hofeller, "Now, Hofeller, when
14 you're drawing these plans, keep the number of
15 divided counties to a minimum"?

16 MR. FARR: Objection.

17 SENATOR RUCHO: Our advice -- and I'm
18 going to repeat it again -- that we have to have
19 the Voting Rights Act blended with the Stephenson
20 criteria and also with the Strickland criteria, and
21 under that circumstance we believe with that
22 criteria and that direction Mr. Hofeller was able
23 to deliver and we enacted plans to meet all of the
24 requirements of the Stephenson and Whole County
25 Provisions.

1 BY MR. SPEAS:

2 Q. Did you tell him "We want these districts to be
3 compact"?

4 MR. PETERS: Objection.

5 MR. FARR: Objection.

6 SENATOR RUCHO: We believed that by
7 following the Stephenson criteria and that
8 step-by-step down that that would have constituted
9 compact districts as the final result.

10 BY MR. SPEAS:

11 Q. Now, Representative Lewis said yesterday, I believe
12 I'm stating his testimony correctly, that he did
13 not tell Hofeller to avoid splitting precincts in
14 Voting Tabulation Districts.

15 Did you give Hofeller any instruction about
16 VTDs?

17 A. I think Representative Lewis and I were consistent
18 in the sense to try to keep them together where you
19 can but you need to comply with the law as it is --
20 as it is outlined in the criteria.

21 Q. And so if the law said don't split precincts, then
22 you wanted Hofeller not to split precincts; is that
23 correct?

24 MR. PETERS: Objection.

25 MR. FARR: Objection.

1 SENATOR RUCHO: We told Mr. Hofeller to
2 comply with the law and that's basically the
3 results that we got.

4 BY MR. SPEAS:

5 Q. Okay. Now let me ask you this: Again, I'm talking
6 about the Senate plan. One of the things you talk
7 about in your public statements is competitiveness.

8 A. Yes, sir.

9 Q. What did you tell Hofeller about competitiveness
10 and what did you mean by competitiveness?

11 A. If we followed the criteria that we mentioned on a
12 number of occasions here in drawing up the Voting
13 Rights Act districts and once we established the
14 Voting Rights Act districts, you know, with the
15 Stephenson criteria, then we went into the non-VRA
16 districts, we assumed that those districts would be
17 competitive just as the outcome would result from
18 it.

19 Q. Did you say, "Hofeller, now we want Republicans to
20 win these districts"?

21 A. I don't ever --

22 MR. FARR: Objection to the form of the
23 question.

24 SENATOR RUCHO: I don't ever remember
25 saying we want Republicans to win these districts,

1 but we're not hiding the fact that -- the fact that
2 politics has something to do with the whole
3 process.

4 BY MR. SPEAS:

5 Q. Right much to do with it, doesn't it, Senator?

6 MR. PETERS: Objection.

7 SENATOR RUCHO: A lot less now than it did
8 because we have Stephenson, Mr. Speas.

9 BY MR. SPEAS:

10 Q. And one of the purposes of Stephenson was to take
11 politics out of it, right?

12 MR. PETERS: Objection.

13 MR. FARR: Objection.

14 BY MR. SPEAS:

15 Q. Can you answer that?

16 A. I think in degrees it has.

17 MR. SPEAS: Let me ask the court reporter
18 to mark a document.

19 (WHEREUPON, Exhibit 199 was marked for
20 identification.)

21 BY MR. SPEAS:

22 Q. Senator Rucho, I have put in front of you an
23 exhibit consisting of three pages that's marked
24 Exhibit 199. The first page is Rucho Senate VRA
25 Districts, the second page is Rucho Senate 1 and

1 the last page is Rucho Senate 2.

2 Do you recognize those as maps of the plans
3 drawn for you by Mr. Hofeller?

4 **A.** Yes, sir, I believe that would be correct.

5 **Q.** Now, the first of the maps, the VRA District map
6 was released to the public on June 17th, I believe;
7 is that correct?

8 **A.** To the best of my recollection.

9 **Q.** And it was given to you by Mr. Hofeller sometime
10 prior to June 17th, I guess.

11 **A.** It was, I'm sure, reviewed by myself after
12 Mr. Hofeller and it is a matter of -- it isn't like
13 coming in and showing this map and this. You go
14 iteration by iteration to reach a level that
15 finally achieves the final goal of meeting our
16 criteria.

17 **Q.** So on June 17th you were satisfied based on your
18 review of Mr. Hofeller's work that this map, VRA
19 Districts map, complied with your directions to
20 Mr. Hofeller regarding the VRA districts, am I
21 correct?

22 **A.** We made this available for public comment, yes,
23 sir, I believe that would be meeting our criteria
24 up to this process, and then we waited for public
25 comments that would come from the many public

1 hearings that we had, and this one was the first
2 one dealing with the VRA districts.

3 **Q.** And I take it from your last answer that the VRA
4 District map reflects the final product of an
5 evolutionary process, the maps evolved over time as
6 you worked with Mr. Hofeller; is that correct?

7 **A.** I think that would be accurate in the sense that
8 once you set the pods out and then you set in the
9 Voting Rights Act district and then you were
10 comfortable with that based on public comment and
11 public input and then you go onto the next phase as
12 we followed the Stephenson order.

13 **Q.** Now, Senator, as I did with Representative Lewis
14 yesterday, I would like for you to look at --
15 compare the VRA Districts map with the Rucho
16 Senate 1 map and tell me what, if any, differences
17 there are between those maps that you recall as we
18 sit here today.

19 **A.** Well, one of the -- one of the changes that
20 occurred based on public comment, and that includes
21 a change in the two-county pod which is district --
22 let me see. I think that's district -- I think we
23 maintained it as District 21, but that goes from
24 what was all encompassed in Cumberland to including
25 the Section 5 county in Hoke in addition to the

1 population in Cumberland in forming, and I think,
2 Mr. Speas, that is District 21. And then the other
3 part of that two-county pod would be District
4 Number 19. That's one that I can see clearly.

5 **Q.** Do you recall any other changes?

6 **A.** Give me a moment and I'll take a look. There may
7 have been some minor changes in 38 and 40 in
8 regards to some of the edges, but conceptually
9 they're there.

10 **Q.** Did District 32 change between the VRA District
11 plan and Rucho Senate 1?

12 **A.** Yes, sir, that appears to have a little bit of
13 change in the -- in that shape.

14 **Q.** And do you know the reason for that change?

15 **A.** When I was trying to draw these maps, we were
16 trying to achieve, as I alluded to earlier, a rough
17 proportional and equal opportunity to elect --
18 would have the voters from the districts elect the
19 candidates of their choice.

20 We had nine what we called majority-
21 minority districts. And the district in Forsyth
22 county, 32, was, you know, keeping the two-county
23 pod between Yadkin and Forsyth. We could not make
24 what would -- could be or did not constitute a
25 cohesive and compact population to achieve that

1 level of majority-minority status so, in essence,
2 what we did on 32 was put together a district which
3 we call a coalition district made up of African
4 Americans and Hispanics, and some of the testimony
5 that was -- or some of the public statements that
6 alluded to my and Representative Lewis's
7 conversation with Congressman Watt, he felt that
8 that was a pretty reasonable interpretation of
9 cohesive groups working together.

10 **Q.** And let me ask: Do you recall any other
11 differences between the VRA District map and the
12 Senate 1 map?

13 **A.** There may have been some changes in 14, and I'm
14 trying to go from back and forth here a moment.

15 **Q.** Well, now the VRA District one -- oh, 14 is Wake
16 county. All right.

17 **A.** Okay. As best I can tell, I mean, there's some
18 fine tuning on Number 5 but not significant in
19 regards to some of the structure there on -- going
20 from VRA District map to Rucho Senate 1.

21 **Q.** Now, let's take a minute and compare Rucho Senate 1
22 with Rucho Senate 2, and help me -- to the extent
23 you can recall, tell me what the difference is
24 between Senate -- Rucho Senate 1 and Rucho Senate 2
25 are.

1 **A.** I think the major change on that involved trying to
2 keep District 12, Sampson county and Duplin county,
3 whole, Sampson county whole. And then we worked
4 with Johnston county to -- again, one part of it
5 was to keep Sampson county whole, trying to improve
6 the number of whole counties that we had, and I
7 think that reflected some of the change on that
8 particular area.

9 **Q.** So in Rucho Senate 1, Sampson is divided, in Rucho
10 Senate 2, Sampson is not divided; is that correct?

11 **A.** That is correct, sir.

12 **Q.** And so that action was consistent with your
13 directions to Mr. Hofeller?

14 MR. FARR: To what?

15 MR. SPEAS: To minimize --

16 SENATOR RUCHO: To follow the Stephenson
17 criteria.

18 BY MR. SPEAS:

19 **Q.** Do you recall any other differences just offhand?
20 And I'm not -- you know, I just want you to recall
21 the best you can the major differences between
22 Rucho Senate 1 and Rucho Senate 2.

23 **A.** There was some additional -- apparently some
24 additional changes in Randolph county in trying to
25 blend in that two-county pod there -- well, what

1 was actually three-county pod. I think that was

2 probably the extent of our significant changes.

3 **Q.** And Rucho Senate 2 is the enacted plan?

4 **A.** Yes, sir.

5 **Q.** That's the plan that went in the one side of that

6 machine and came out the other?

7 **A.** It was good information coming in and some

8 not-so-good information coming out, yes, sir.

9 **Q.** Let's go back to Rucho Senate VRA Districts for a
10 minute. This was presented to you by Hofeller.

11 And are the districts that are colored the VRA
12 districts?

13 **A.** I would say to you that 13, which is listed there,
14 is probably not what I would consider the VRA
15 district even though it is composed of -- it's not
16 a majority-minority district.

17 **Q.** Do you recall the minority population in that
18 district?

19 **A.** Best I can tell -- it's been a while since I've
20 looked at the number -- it's probably a third, a
21 third, a third is my best recollection.

22 **Q.** But there are, in fact, 11 colored districts on the
23 Senate VRA Districts map, correct?

24 **A.** There are actually nine majority-minority districts
25 and there is one coalition district in 32 and

1 13 -- I'm not sure how I would define that one, but
2 it is not a majority-minority district but it was
3 there to provide information for public comment.

4 **Q.** But it was labeled a VRA district?

5 MR. FARR: Objection.

6 SENATOR RUCHO: Meeting the criteria that
7 we established, the VRA districts that we were
8 required to meet under Stephenson, under the Voting
9 Rights Act organization and Strickland, I believe
10 you have nine VRA districts and the coalition
11 district in 32 and then a district that is non
12 majority-minority District Number 13.

13 BY MR. SPEAS:

14 **Q.** Who labeled this map? Mr. Hofeller?

15 **A.** Meaning labeled number wise, title wise?

16 **Q.** Who gave it the label Rucho Senate VRA Districts?

17 **A.** I'm not sure whether Mr. Hofeller labeled it or
18 not, but the intent was to be sure that everyone
19 understood that this was the first step in meeting
20 the Stephenson criteria.

21 **Q.** Now -- do you need a break? We can keep going?

22 MR. FARR: Do you want a break? It's up
23 to you.

24 SENATOR RUCHO: Yeah, let's take a break.

25 Thank you.

1 (Brief Recess: 10:28 to 10:47 a.m.)

2 BY MR. SPEAS:

3 Q. Senator, I'd like to ask you to compare the VRA
4 districts on the first page with those districts on
5 the enacted plans, Rucho Senate 2. And would it be
6 accurate that District 3 did not change between VRA
7 Districts and Senate 2?

8 A. I'd say, yes, sir, I think that would be fair.

9 Q. And would it be accurate that District 13 remained
10 the same?

11 A. Yes, sir, two-county pod.

12 Q. Now, I am going to ask the court reporter to mark
13 this document as Exhibit 200.

14 (WHEREUPON, Exhibit 200 was marked for
15 identification.)

16 BY MR. SPEAS:

17 Q. Senator Rucho, I would report to you that
18 Exhibit 200 consists of two pages. The first is a
19 copy of District 4 in the VRA Districts plan and
20 the second page is a copy of District 4 in the
21 Rucho Senate 2 plan. And I apologize for the lack
22 of toner in the copier machine, but looking at
23 Exhibit 200, does it appear that District 4 in the
24 VRA Districts plan is essentially the same as
25 District 4 as enacted?

1 **A.** It appears to be essentially the same.

2 (WHEREUPON, Exhibit 201 was marked for
3 identification.)

4 BY MR. SPEAS:

5 **Q.** I am going to hand you another document marked as
6 Exhibit 201 and I would report to you that this is
7 VRA District 5 in the VRA Districts plan and
8 District 5 in the enacted plan and I would ask you
9 if the plan is essentially unchanged?

10 MR. FARR: Eddie, where did these come
11 from?

12 MR. SPEAS: The website. They're printed
13 from the General Assembly website.

14 SENATOR RUCHO: Repeat your question
15 again, sir, please.

16 BY MR. SPEAS:

17 **Q.** Is Senate District 5 as proposed in the VRA
18 Districts plan essentially identical to District 5
19 as enacted in the Senate -- Rucho Senate 2 plan?

20 **A.** There are some minor changes but essentially
21 correct.

22 **Q.** And I am going to ask the court reporter to mark
23 this next document as Exhibit 202.

24 (WHEREUPON, Exhibit 202 was marked for
25 identification.)

1 BY MR. SPEAS:

2 Q. 202 is Senate District 14. And I would ask you,
3 Senator Rucho, if Senate District 14 as proposed in
4 the VRA Districts plan is essentially identical to
5 District 14 as enacted in Rucho Senate 2?

6 MR. FARR: You might want to look at this
7 first.

8 SENATOR RUCHO: Mr. Speas, I'm not sure I
9 understand in this case essentially how there are
10 differences, but conceptually it covers the same
11 zone.

12 BY MR. SPEAS:

13 Q. It is largely the same shape and largely covers the
14 same area and the differences that are there are
15 not major differences?

16 MR. FARR: Is that the way you described
17 it?

18 MR. SPEAS: Yes.

19 SENATOR RUCHO: Under that scenario, I
20 have to say I guess it is essentially the same.

21 MR. SPEAS: And I am going to ask the
22 court reporter to mark this next document as
23 Exhibit 203.

24 (WHEREUPON, Exhibit 203 was marked for
25 identification.)

1 BY MR. SPEAS:

2 Q. Senator, this is District 20 in the VRA Districts
3 plan and District 20 in the enacted plan, and I
4 would ask you if it is correct that VRA District 20
5 in the -- I mean District 20 in the VRA Districts
6 plan is essentially the same as District 20 as
7 enacted.

8 A. I lose a little detail on the darkening, but it is
9 a two-county pod between Granville and Durham and I
10 would say under the same criteria that we talked
11 earlier it is essentially the same.

12 Q. Okay. And I'm going to ask the court reporter to
13 mark this next document as 204.

14 (WHEREUPON, Exhibit 204 was marked for
15 identification.)

16 BY MR. SPEAS:

17 Q. Senator Rucho, I put in front of you Exhibit 204
18 which is a map of District 21 in the Senate VRA
19 Districts plan and District 21 in the enacted plan.

20 And as you testified earlier, is it
21 accurate that District 21 changed between the VRA
22 Districts plan and the enacted plan to make the
23 Cumberland county portion smaller and to add Hoke
24 county?

25 A. Yes, sir.

1 Q. And I'll ask the court reporter to mark this next
2 document as Exhibit 205.

3 (WHEREUPON, Exhibit 205 was marked for
4 identification.)

5 BY MR. SPEAS:

6 Q. Senator Rucho, Exhibit 205 is District 28 in
7 Guilford county as first proposed in the VRA
8 Districts plan and as then enacted in Rucho
9 Senate 2.

10 I would ask you if District 28 as enacted
11 is essentially identical to District 28 as
12 proposed?

13 MR. FARR: I am going to just object to
14 the term "essentially identical," but you can go
15 ahead and answer the question.

16 SENATOR RUCHO: It seems to be identical
17 to that.

18 MR. SPEAS: And I would ask the
19 court reporter to mark this next document as 206.

20 (WHEREUPON, Exhibit 206 was marked for
21 identification.)

22 BY MR. SPEAS:

23 Q. And, Senator, Exhibit 206 is Senate District 38 in
24 the VRA Districts plan and Senate District 38 as
25 enacted in Rucho Senate 2, and I would ask you if

1 the district remains essentially the same from the
2 date it was proposed until the date it was enacted?

3 **A.** Seems to be similar maps.

4 **Q.** And this is a Mecklenburg county district?

5 **A.** Yes, sir.

6 **Q.** And finally I would ask the court reporter to mark
7 this next document as 207.

8 (WHEREUPON, Exhibit 207 was marked for
9 identification.)

10 BY MR. SPEAS:

11 **Q.** Senator, is Exhibit 207 Senate District 40 as
12 proposed in the VRA Districts plan and Senate
13 District 40 as enacted in the Rucho Senate plan and
14 did the district remain essentially unchanged from
15 the time it was proposed until the time it was
16 enacted?

17 MR. FARR: Objection.

18 MR. PETERS: Objection.

19 SENATOR RUCHO: It appears to be similar.

20 BY MR. SPEAS:

21 **Q.** Senator Rucho, yesterday Representative Lewis
22 testified that at one point the Republican
23 representatives were invited to meet with
24 Mr. Hofeller to view their districts and that they
25 went to view their districts in -- according to the

1 grouping in which their district was located.

2 Did that same thing happen on the Senate
3 side?

4 **A.** An opportunity was given for anybody that would
5 like to look at their district in that circumstance
6 once the maps became available to visit so that
7 they could look at it to my recollection the best I
8 can remember time schedule.

9 **Q.** And was that opportunity given to Republican
10 senators?

11 **A.** Yes. And I did have an opportunity to share with
12 committee members the districts that they were
13 into, Republicans and Democrats.

14 **Q.** And did the Republican senators go to the
15 Brownstone Hotel to meet with Hofeller or did they
16 meet someplace else?

17 **A.** They -- actually, we were at the Hillsborough
18 location when they chose to -- it was not taken by
19 everybody as they chose not to participate in it.
20 That was fine.

21 **Q.** Okay. I'm sorry, I just missed something. The
22 Republican senators got a chance to meet with
23 Hofeller, some chose to go, some chose not to go?

24 **A.** Not every one of them met with Hofeller. They may
25 have met with Mr. Raupe.

1 Q. Okay. And the meetings were at the Brownstone
2 Hotel?

3 A. No, sir. At the Hillsborough location.

4 Q. At the Republican party headquarters?

5 A. Yes, sir.

6 Q. And what was the purpose of those meetings?

7 A. The purpose of the meeting was to let them know
8 what criteria were formed as far as the groupings
9 because in our maps the groupings ended up having
10 to double bunk some Republicans and some Democrats.

11 And as Representative Lewis alluded to
12 earlier, we considered the groupings to be pretty
13 much sacrosanct because of the fact it was required
14 by Stephenson to -- I say sacrosanct. I'm just
15 saying it would be -- unfortunately, we didn't make
16 changes other than the fact that the Stephenson
17 criteria said that these groupings should be the
18 same or together.

19 Q. Were Republican members of the Senate given the
20 opportunity to propose changes to their districts?

21 A. Yes.

22 Q. And do you recall changes that members proposed?

23 A. Let me think. If they were, they were relatively
24 insignificant along the edges or, you know.

25 Q. And were those -- to the extent changes were

1 proposed, were they proposed to you or to Hofeller?

2 **A.** They were proposed to -- if I was there, most of
3 the time I was there, it was proposed to the map
4 drawer.

5 **Q.** And who made the final decision as to whether the
6 changes would be made or not?

7 **A.** That would be my decision based on meeting the
8 letter of the law and the criteria that were
9 established.

10 **Q.** It would be a decision you would make after talking
11 to Hofeller?

12 **A.** Making sure that he was comfortable that the maps
13 still met the criteria that we had previously set
14 up.

15 **Q.** Now, the Democrat members of the committee who you
16 said were given a preview of their districts, did
17 they go up to the Republican headquarters?

18 **A.** They did not visit the Hillsborough location, but I
19 had two occasions with them. One in the very
20 beginning I met with -- I can remember clearly
21 Representative Jones, Representative -- excuse
22 me -- Senator Jones, Senator McKissick, Senator
23 Graham and I believe Senator White, if I'm not
24 mistaken.

25 And the first time was prior to any map

1 release because we wanted their thoughts and their
2 opinions as to -- you know, there was an original
3 letter sent out to all members of the General
4 Assembly from Representative Lewis and myself
5 talking about them getting involved, the
6 Legislator's Guide and outlining the criteria that
7 we ended up formulating and actually using to
8 fabricate or to put the maps together.

9 But there was a second meeting after the
10 maps were out where we had those same members of
11 the committee together individually, actually, and
12 had a chance to meet with them in the legislative
13 building and let them have a chance to review what
14 they saw and make comments.

15 **Q.** And who was present at those meetings?

16 **A.** Each time would be myself, a senator and
17 Mr. Woodcox.

18 **Q.** Let's go back to Mr. Hofeller just a little bit.

19 Hofeller was not hired by the legislature. Am I
20 correct about that?

21 **A.** My understanding is that Mr. Hofeller is being
22 funded from state funds through Mr. Farr's office,
23 Ogletree.

24 **Q.** But he does not have a contract with the
25 legislature?

1 **A.** To the best of my recollection not.

2 **Q.** Does he have a contract with Mr. Farr's law firm?

3 **A.** I don't know the answer.

4 **Q.** If there is a contract, you have not seen it?

5 **A.** That is correct.

6 **Q.** Did you approve Mr. Farr's firm's decision to hire
7 Hofeller?

8 **A.** I believe it was a joint decision from, you know,
9 myself and Representative Lewis as far as committee
10 chairs to authorize that decision on behalf of --

11 **Q.** Okay. Did you or Representative Lewis ever receive
12 reports from Mr. Hofeller about the hours he was
13 working, about the days he was working? Did you
14 receive such reports?

15 **A.** No, sir.

16 **Q.** Do you know whether there are documents that record
17 the amount of time Mr. Hofeller spent working on
18 these plans?

19 **A.** I'm not aware of that.

20 **Q.** And so I assume you've never asked for such
21 documents.

22 **A.** Never asked for them.

23 **Q.** Do you know how much money Mr. Farr's firm paid
24 Mr. Hofeller?

25 **A.** I do not recollect that amount.

1 **Q.** Now, I want to talk to you a little bit about how
2 you communicated with Mr. Hofeller. You've talked
3 about meeting with him from time to time. Did you
4 have e-mail communications with Mr. Hofeller?

5 **A.** I'm trying to remember if I did or not. I don't
6 remember.

7 **Q.** Did you have e-mail communications with
8 Mr. Hofeller through Mr. Farr?

9 MR. FARR: Objection.

10 SENATOR RUCHO: I don't recall.

11 May I ask a question? Was that using
12 Mr. Hofeller to get to -- excuse me -- Mr. Farr to
13 get to Mr. Hofeller? I don't remember that. Okay.
14 I just wanted to be sure.

15 BY MR. SPEAS:

16 **Q.** Why did you not hire Mr. -- why did the legislature
17 not hire Mr. Hofeller directly?

18 MR. PETERS: Objection.

19 MR. FARR: Instruct you not to answer that
20 question.

21 MR. SPEAS: Can I ask the basis of it? Is
22 that instruction based on the attorney-client --

23 MR. FARR: It involves legal advice.

24 BY MR. SPEAS:

25 **Q.** Why did the legislature not directly hire

1 Mr. Morgan?

2 A. I have no good reason. I don't know. It's just a
3 matter we needed somebody to do the job for us.

4 Q. And why did the legislature not directly hire
5 Mr. Oldham?

6 A. Same answer. I have no reason.

7 Q. And why did the legislature not hire Mr. --
8 directly hire Mr. Raupe?

9 A. No specific reason.

10 Q. Okay. Senator, we'll come back to this particular
11 redistricting, but I'd like to ask you about
12 another redistricting for a minute.

13 The General Assembly in 2011 enacted
14 legislation regarding the redistricting out of the
15 Guilford County Board of Commissioners; is that
16 correct?

17 A. Yes, sir, I believe that's correct.

18 Q. And did that particular legislation come through
19 your committee, the Redistricting Committee?

20 A. No, sir.

21 Q. But you were familiar with that legislation?

22 A. I was on the floor during the debate.

23 Q. Can we mark this as the next exhibit, please.

24 (WHEREUPON, Exhibit 208 was marked for
25 identification.)

1 BY MR. SPEAS:

2 **Q.** Senator, I'm handing you Exhibit 208 which is a
3 copy of Session Law 2011-172 as printed from the
4 General Assembly website and it is entitled An Act
5 to Restructure the Guilford County Board of
6 Commissioners.

7 Would you look at that and tell me whether
8 you recognize that as a bill enacted by the General
9 Assembly in 2011, specifically on June 17, 2011?

10 **A.** Well, as best I can remember -- I don't remember
11 seeing it in this format because I usually work on
12 the computer screen when I'm in the legislative
13 building, but it seems like as best I can remember
14 that that legislation was brought before the
15 Senate.

16 **Q.** Do you remember whether you voted for this
17 legislation?

18 **A.** I did vote for it.

19 **Q.** And in Section 2(a) is one of the directions the
20 legislature issued to the Board of Commissioners of
21 Guilford County to minimize the dividing of
22 precincts?

23 **A.** It says that.

24 **Q.** And is one of the directions the legislature on
25 June 17, 2011, issued to the Guilford County Board

1 of Commissioners to not consider the place of
2 residence of incumbents except as necessary to
3 comply with Section 5 of the Voting Rights Act?

4 **A.** It is on this particular bill.

5 **Q.** Now, this bill never came to your Redistricting
6 Committee; is that correct?

7 **A.** No, sir.

8 **Q.** Did it go through the Elections Committee or where
9 did it go?

10 **A.** I don't remember.

11 **Q.** Now, let me ask the court reporter to mark this as
12 Exhibit 209.

13 (WHEREUPON, Exhibit 209 was marked for
14 identification.)

15 MR. FARR: Eddie, I am going to -- he has
16 not waived his legislative immunity on other bills
17 besides the bills that are the subject of this
18 lawsuit.

19 MR. SPEAS: Well, let me ask him some
20 questions and if I cross the line, you will
21 instruct him not to answer.

22 BY MR. SPEAS:

23 **Q.** Senator, Exhibit 209 is a copy of Session Law
24 2011-407 which is a bill enacted by the General
25 Assembly of North Carolina on 28 July 2011. It

1 concerns, among other things, the redistricting in
2 the Mecklenburg County Board of Commissioners.

3 Do you recognize that document?

4 MR. FARR: Excuse me. May I take a
5 session here with Mr. Peters.

6 (Discussion held off the record.)

7 MR. FARR: Eddie, I'm sorry, I was asleep
8 at the switch on the Guilford county thing, but I
9 am going to recommend Senator Rucho exercise
10 legislative privilege on these other bills.

11 MR. SPEAS: Okay. Well, let me ask
12 questions and then you just tell him not to answer
13 because I think some of them are not covered, some
14 of my questions are not covered by the privilege.

15 BY MR. SPEAS:

16 **Q.** Do you recognize this bill as a bill enacted by the
17 General Assembly? Do you recognize Exhibit 209 as
18 a bill enacted by the General Assembly?

19 **A.** Mr. Speas, I know that we had some election bills
20 through that period of time and know Mecklenburg
21 county was there, but to say I can specifically say
22 yes to this, I can't because I don't remember the
23 exact bill.

24 **Q.** All right. Let me ask the court reporter to mark
25 this as Exhibit 210.

1 (WHEREUPON, Exhibit 210 was marked for
2 identification.)

3 BY MR. SPEAS:

4 Q. Senator Rucho, I am handing you a document marked
5 Exhibit 210, and I would report to you that this
6 was taken from the web page of the County of
7 Mecklenburg and I would report to you that it
8 describes the process undertaken by the Mecklenburg
9 County Board of Commissioners to redistrict the
10 Board of Commissioners in 2011, and I would ask you
11 to examine it and tell me whether -- first whether
12 you've ever seen this portion of the web page of
13 Mecklenburg County or not.

14 A. Mr. Speas, I don't remember ever seeing that page.

15 Q. Independent of this document, are you aware that
16 the Mecklenburg County Board of Commissioners began
17 the process to redistrict itself in 2011?

18 A. I'm aware that it occurred.

19 Q. And are you aware that the Mecklenburg County
20 commissioners appointed a commission to assist it
21 in that process?

22 A. I'm aware that they did.

23 Q. And are you aware that the Mecklenburg County
24 commissioners adopted criteria that gave
25 instructions to the committee in preparing the

1 plan?

2 A. I'm not aware of that.

3 Q. Senator, let's talk a little bit about the
4 Congressional plan. And yesterday an exhibit was
5 introduced. I'll find it in just a minute. It was
6 Exhibit 196 from yesterday. If we could put that
7 exhibit in front of you, Exhibit 190.

8 Representative Lewis testified about this
9 yesterday. Do you remember his testimony about
10 that generally, Senator Rucho?

11 A. Yes, sir, I was here and listened to it but maybe
12 not in the specifics that he was answering.

13 Q. And do you recognize Exhibit 190 as containing the
14 map of the first proposed Congressional plan,
15 Rucho-Lewis Congress 1 and the successive plan
16 Rucho-Lewis Congress 2, Rucho-Lewis Congress 2A and
17 Rucho-Lewis Congress 3?

18 A. Yes, sir, they seem to be.

19 Q. And Rucho-Lewis Congress 1 is the map drawn for you
20 and Representative Lewis by Mr. Hofeller, the first
21 map?

22 A. The first map, yes, sir.

23 Q. And did you review this first map proposed by
24 Mr. Hofeller or sent to you by Representative
25 Hofeller (sic) in making a determination as to

1 whether it met the criteria that you and
2 Representative Lewis had given to Mr. Hofeller?

3 **A.** Yes, sir. I will say to you that both myself and
4 Representative Lewis had a chance to review it
5 prior to its being issued publicly and, yes, it did
6 meet the criteria that we had presented.

7 **Q.** And the successive versions of that plan,
8 Rucho-Lewis Congress 2, 2A and 3, also met -- you
9 reviewed them and also determined that those met
10 the criteria you had given Mr. Hofeller?

11 MR. FARR: Objection.

12 SENATOR RUCHO: The criteria that we gave
13 Mr. Hofeller is consistent. There were some
14 changes into the second map because of some request
15 made by or some request by Mr. -- Congressman
16 Butterfield.

17 We did -- as was mentioned yesterday, had
18 an opportunity to meet with him twice. One was to
19 gather information about his thoughts. The second
20 time was to share with him a map actually at the
21 legislative building and get his opinion on that
22 map and -- well, I'll say that the Map Number 1 is
23 the one that we got his opinion on. The Map
24 Number 2 was subsequent to a letter we received.

25 BY MR. SPEAS:

1 **Q.** Senator, I want to also put in front of you now
2 Exhibit 55 from the Churchill deposition which
3 Representative Lewis also testified about
4 yesterday, and I would like for you to turn in that
5 exhibit to the public statement issued by you and
6 Representative Lewis on July 1, 2011, regarding the
7 Congressional plan. I think it's the third.

8 Would you review that document?

9 **A.** Completely?

10 **Q.** Well, you're familiar with that document?

11 **A.** Yes, sir, I've had an opportunity to read it.

12 **Q.** And this is the document which on July 1, 2011, you
13 state the criteria that you had previously provided
14 to Hofeller orally, correct?

15 **A.** Repeat that again, please, sir.

16 **Q.** The July 1, 2011, public statement sets forth the
17 criteria for the development of the Congressional
18 plan that you had previously provided to Hofeller
19 orally?

20 **A.** The criteria that is listed here was what was used
21 to generate Rucho-Lewis Congress 1.

22 **Q.** Okay. Turn with me to page 7 of that July 1st
23 document. And one of the criteria you issued to
24 Mr. Hofeller was whole counties and whole
25 precincts, and you stated, quote, "Counties and

1 precincts are two specific examples of communities
2 of interest. Like other interests, they must be
3 balanced. We have attempted to respect county
4 lines and whole precincts when it was logical to do
5 so and consistent with other relevant factors."

6 Did I read that correctly?

7 **A.** Yes, sir. I'd only say to you that the term
8 "precinct" and "VTD" seem to get mixed back and
9 forth, and I think what we told Mr. Hofeller is
10 that whenever possible, whole counties and whole
11 VTDs whenever possible as long as he was complying
12 with the other federal and state requirements.

13 **Q.** So I just want to be very clear. I heard both you
14 and Representative Lewis say that you did not
15 inform Mr. Hofeller that he should avoid splitting
16 precincts and VTDs in drawing the State House and
17 State Senate plans, but here you and Representative
18 Lewis are informing Mr. Hofeller to avoid splitting
19 precincts in the Congressional plan.

20 Do I understand correctly what happened?

21 **A.** I think there is still a consistency, Mr. Speas, in
22 the sense that it was clear -- you know, I mean,
23 you understand under Congressional map there is no
24 requirement for whole counties.

25 **Q.** That remains to be seen.

1 **A.** That's fine. I'm not a lawyer, and I don't expect
2 to get into that battle with you, but in essence,
3 we asked Mr. Hofeller to comply on legislative maps
4 as we described with the criteria and on the
5 Congressional maps to, whenever possible, keep them
6 whole for counties and do the best he could with
7 the VTDs keeping them whole.

8 **Q.** Okay. Let's focus on the county direction to keep
9 counties whole here for a minute. Would you tell
10 me how Congressional District 4 in Rucho-Lewis
11 Congress 1 respects county lines?

12 MR. PETERS: Objection.

13 BY MR. SPEAS:

14 **Q.** And tell me further how you believe Congressional
15 District 4 complies with the direction you gave to
16 Mr. Hofeller about whole counties.

17 **A.** The Congressional District 4 -- and we gave
18 Mr. Hofeller verbal instructions on using the same
19 criteria in drawing District Number 12 which was to
20 make it a strongly performing Democrat district.

21 **Q.** So --

22 **A.** And that being said, we asked him, whenever
23 possible, to keep the VTDs whole and also to meet
24 the necessary zero deviation, one person, one vote.

25 **Q.** So I read through the July 1, 2011, document. I

1 don't see any direction to Mr. Hofeller to create
2 Democratic performing districts. Is there one or
3 was that given to him orally?

4 **A.** When we inherited District Number 12, that was the
5 way it was drawn, and we used that -- which has
6 apparently received the Department of Justice
7 approval on at least for 20 years, as
8 Representative Lewis said, and we asked him to
9 follow the same criteria in producing District
10 Number 4.

11 **Q.** So are you -- is it your testimony that District 4
12 is entirely -- the shape of District 4 and the fact
13 that it divides -- is composed of no whole counties
14 reflects your direction to Mr. Hofeller to create a
15 Democratic performing district?

16 MR. FARR: Can we please take some time to
17 look at this statement first?

18 MR. SPEAS: Sure. Sure. I'm sorry, I
19 didn't mean to push you. And as you're looking
20 through it, let me just say what I want to know is
21 how Congressional District 4 complies with
22 Criterion Number 7 in the July 1, 2011,
23 instructions.

24 MR. FARR: What was your question?

25 BY MR. SPEAS:

1 Q. Have you had an opportunity to review the document
2 now, Senator Rucho?

3 A. Yes, sir. And the question is?

4 Q. How you explain the fact that Congressional
5 District 4 in Rucho-Lewis Congress 1 consists of
6 only piece of counties in light of your direction
7 to Mr. Hofeller with respect to whole counties in
8 the Congressional plan?

9 A. The best I can recollect is that Representative
10 Lewis and I gave Mr. Hofeller verbal directions in
11 trying to produce a map or, excuse me, a district
12 with the similar criteria as they were done to --
13 as it was done to formulate what we inherited in
14 District Number 12, meaning a highly Democrat
15 performing district, and that is the same criteria
16 that we gave regarding for District Number 4 to be
17 fabricated and it was based on President Obama's
18 election results in 2008.

19 Q. So you wanted to create -- looking at District 4,
20 in some ways it's kind of a mirror image of
21 District 12; is that right?

22 MR. PETERS: Objection.

23 SENATOR RUCHO: It's made -- it's built on
24 the same criteria that, one, we inherited, and the
25 whole purpose behind this was to be able to produce

1 Congressional maps that were fair and legal, that
2 were competitive and that would meet the Justice
3 Department approval for pre-clearance and then move
4 the election process forward.

5 BY MR. SPEAS:

6 **Q.** There are no Voting Rights Act considerations at
7 all present with regard to the shape and
8 configuration of District 4, is there, Senator?

9 MR. FARR: Objection.

10 SENATOR RUCHO: To the best of my
11 knowledge, we didn't consider that. It was
12 strictly political.

13 BY MR. SPEAS:

14 **Q.** Now, help me with this. Was District 4 Hofeller's
15 idea, the shape and configuration, was it
16 Hofeller's idea or was it your idea?

17 **A.** I can't tell you whose idea it was. A lot of these
18 maps came about because, you know, when District
19 Number 1 or any of these districts are formulated,
20 there is a concavity and a convexity in how they're
21 formed, and so as they were being pieced together,
22 it seemed like that was a reasonable way of trying
23 to meet the same criteria we used on number 12.

24 **Q.** Okay, but help me. I wanted to know whether it was
25 Hofeller's idea or yours, and your answer is you're

1 not sure?

2 A. It was a --

3 Q. It grew like topsy?

4 MR. FARR: I would object to the use of
5 that term "topsy."

6 SENATOR RUCHO: It was one iteration in
7 the process of producing maps.

8 BY MR. SPEAS:

9 Q. So could it have been Mr. Morgan's idea?

10 A. I don't recollect that.

11 Q. Could it have been Mr. Oldham's idea?

12 A. I don't remember that.

13 Q. Could it have been Mr. Raupe's idea?

14 A. I don't remember that.

15 Q. Okay. Isn't it fair to say, Senator, that
16 District 4 is entirely the product of politics?

17 MR. PETERS: Objection.

18 SENATOR RUCHO: I think it's built on the
19 same criteria that was established when District
20 Number 12 was and has met DOJ approval and
21 pre-clearance. And again, that was the intent of
22 what we were trying to get accomplished because
23 that is one of our goals.

24 BY MR. SPEAS:

25 Q. So let's look at District 1 with this criterion

1 about whole counties in mind. By my count,
2 District 1 is composed of pieces of 15 counties and
3 only five whole counties.

4 Would you take a look at that and see if
5 that's --

6 A. Which map are we talking about now?

7 Q. Rucho-Lewis Congress 1.

8 A. Congress 1, okay.

9 Q. And, I guess, let me ask you this question: How
10 many pieces of counties are contained in District 1
11 and how many whole counties are contained in
12 District 1 in Rucho-Lewis Congress 1?

13 A. To answer that question -- I don't know the answer
14 to it.

15 To tell you about the original question
16 that you asked, this is District 1 that we
17 inherited from previous maps, had met preclearance
18 approval by the Justice Department, had been
19 approved by the Federal Court in regards to
20 compactness of population, Section 5 counties
21 involved with it, Section 2 counties involved in
22 it, and we did not want to risk any problem with
23 pre-clearance approval with the Justice Department.

24 So we attempted to comply -- other than the
25 fact that it was nearly 97,000 people short in

1 population, and that was one of the reasons why in
2 this case we moved into Wake -- in the final result
3 we moved into Durham to try to help minimize the
4 effect of under population and the issue dealing
5 with one person, one vote over the next ten years.

6 **Q.** Would it be fair to say, Senator Rucho, that in
7 presenting Rucho-Lewis Congress 1 to you,
8 Mr. Hofeller paid no attention whatsoever to your
9 direction to consider keeping counties whole in
10 proposing Congressional District 1?

11 MR. PETERS: Objection.

12 MR. FARR: Objection.

13 SENATOR RUCHO: The criteria that you're
14 alluding to is one part of blending in what has to
15 be an acceptance by the Department of Justice to
16 pre-clear these maps, otherwise we can't hold an
17 election. And one of our major goals, as described
18 earlier, is to achieve pre-clearance which we
19 received very quickly and because of the fact that
20 we followed the letter of the law.

21 BY MR. SPEAS:

22 **Q.** Okay. Let's talk about District 12 for a minute in
23 Rucho-Lewis Congress 1.

24 District 12, like District 4, is composed
25 only of pieces of counties; is that correct?

1 **A.** Mr. Speas, we ended up inheriting this same map
2 that had met pre-clearance approval --

3 **Q.** I understand that.

4 MR. FARR: We'll stipulate it's comprised
5 of pieces of counties.

6 MR. SPEAS: All right.

7 BY MR. SPEAS:

8 **Q.** Continue then.

9 **A.** And under that circumstance, our effort was to be
10 in compliance with what was expected by the
11 Department of Justice with pre-clearance, and all
12 we did with that situation was told Mr. Hofeller to
13 get the zero deviation ideal population in place,
14 try to keep as many VTDs that can be kept whole
15 whole and following the 2008 presidential election
16 results in forming what is a Democrat performing
17 district.

18 **Q.** But again, Senator Rucho, you had informed
19 Mr. Hofeller orally that he was to take some
20 account of keeping counties whole when drawing the
21 Congressional plan and on July 1st you present
22 Rucho-Lewis Congress 1 to the public containing
23 District 12 which doesn't include any whole
24 counties. And so Hofeller wasn't following your
25 directions, was he?

1 MR. PETERS: Objection.

2 MR. FARR: Objection.

3 SENATOR RUCHO: I think the issue that
4 needs to be clarified is the fact that part of the
5 direction was that we needed to have maps that
6 would meet DOJ approval. These 1 and 12 had
7 already been validated on a number of occasions and
8 we felt that using that base would allow us to get
9 pre-clearance approval, and the good news is that's
10 how it turned out.

11 BY MR. SPEAS:

12 Q. Senator, let's talk about another topic. Let's go
13 back to the topic of divided counties a little bit
14 and compliance with the Whole County Provision of
15 the Constitution.

16 Would you place in front of you from
17 yesterday Frey Exhibit 2, Deposition Exhibit 180.
18 And that guys is this.

19 MR. FARR: That's his affidavit, Eddie.

20 MR. SPEAS: But I did not separately
21 identify it.

22 MR. FARR: Do you have a copy?

23 MR. PETERS: Yes.

24 BY MR. SPEAS:

25 Q. Senator Rucho, you have in front of you Exhibit 180

1 from yesterday and it is -- my interest is in the
2 second page of that and it is an excerpt from the
3 Frey Affidavit, and in particular, Exhibit 2 from
4 the Frey Affidavit is a document labeled Count of
5 County Cluster Sizes for Enacted and Proposed
6 Plans. And I would ask you if you have seen that
7 chart before.

8 **A.** I saw it yesterday.

9 **Q.** Had you seen it before?

10 **A.** I don't recall.

11 **Q.** And do you know why Mr. Frey prepared this
12 document?

13 **A.** There may have been a request during one of the
14 committee meetings that this document -- by some
15 member and I think the staff responded to it in
16 that manner.

17 **Q.** And was it intended to demonstrate that Rucho
18 Senate 2 complies with the Whole County Provision
19 of the Constitution?

20 **A.** What it does is it shows that by following the
21 criteria that we have of Stephenson, blending with
22 the Voting Rights Act, following Strickland, we
23 achieved a very low number of county groupings, and
24 that was something we felt was going to be very
25 important to have in place for the Department of

1 Justice to approve pre-clearance.

2 **Q.** Now, let's just look at this chart a minute,
3 Senator, and down the left-hand column two of the
4 plans that are compared are Rucho Senate 2, which
5 is the enacted plan, and Senate Fair and Legal,
6 which is Representative Martin Nesbitt's plan; is
7 that correct?

8 **A.** I believe you're correct on that one.

9 **Q.** And this chart compares those two plans in terms of
10 clusters, correct?

11 **A.** Only in clusters.

12 **Q.** And this chart tells us that both plans had one
13 county cluster consisting -- one cluster consisting
14 of one county, right?

15 **A.** Yes, sir.

16 **Q.** Both plans had two -- 11 clusters consisting of two
17 counties?

18 **A.** Yes, sir.

19 **Q.** Your plan had four clusters consisting of three
20 counties and Nesbitt's plan had three clusters
21 consisting of three counties, correct?

22 **A.** That's correct.

23 **Q.** Your plan had three clusters consisting of four
24 counties and Nesbitt's had seven clusters
25 consisting of four counties, correct?

1 **A.** Yes, sir.

2 **Q.** Both plans had one cluster consisting of five
3 counties?

4 **A.** Yes, sir.

5 **Q.** Your plan had one county consisting -- one cluster
6 consisting of six counties and Nesbitt's had two
7 clusters consisting of six counties, correct?

8 **A.** Yes, sir.

9 **Q.** Your plan had one cluster consisting of seven
10 counties and Nesbitt's had two clusters consisting
11 of seven counties, correct?

12 **A.** Yes, sir.

13 **Q.** Your cluster -- your plan had two clusters
14 consisting of eight counties and Nesbitt's had
15 none?

16 **A.** That's correct.

17 **Q.** Both plans had one cluster consisting of nine
18 counties, correct?

19 **A.** Yes, sir.

20 **Q.** Your plan had one cluster consisting of ten
21 counties and Nesbitt's had none?

22 **A.** That's correct.

23 **Q.** And all together your plan had 26 clusters and
24 Nesbitt's had 28?

25 **A.** That chart is correct.

1 Q. Now, based on your understanding of the Stephenson
2 decision, isn't it correct that the Nesbitt plan
3 more closely corresponds to the whole county
4 requirements than your plan?

5 MR. PETERS: Objection.

6 MR. FARR: Objection.

7 SENATOR RUCHO: I believe that when Rucho
8 Senate 2 is done and as I've described to you with
9 the Voting Rights Act, blending and harmonizing
10 with the whole -- the Stephenson decision and the
11 whole counties and following the groupings as we've
12 done where the Senate Fair and Legal plan does not
13 legally abide by the law and therefore there's no
14 way to compare apples and oranges to that.

15 BY MR. SPEAS:

16 Q. So your testimony is that the Nesbitt plan -- well,
17 let me rephrase that.

18 Let's examine your plan and the Nesbitt
19 plan with respect to some undivided counties, and I
20 think it would be most efficient if I would do
21 that, Senator, by handing you this larger map which
22 is essentially put together by, I think, Mr. Peters
23 sometime ago and it has in it a copy of Rucho
24 Senate 2 and it has in it a copy of State Fair and
25 Legal Nesbitt.

1 And if I may put these in front of you, I
2 want to ask you some questions. And think divided
3 counties because that's what I'm going to talk to
4 you about.

5 **A.** Which one do you want me to look at first?

6 **Q.** Why don't you look at your plan first and I want to
7 ask you this question: Is it correct that your
8 plan divides Iredell county --

9 **A.** This is Rucho 2, you said?

10 **Q.** Yes. Is it true that Rucho 2 divides Iredell
11 county and Nesbitt does not?

12 MR. FARR: Hang on for a second. Can we
13 pop these things out.

14 MR. SPEAS: Yes.

15 MR. FARR: Are you going to ask anything
16 except for the map?

17 MR. SPEAS: No.

18 MR. FARR: We'll just object to that
19 question since the maps speak for themselves, but,
20 Senator Rucho, you may answer that question.

21 BY MR. SPEAS:

22 **Q.** So my question, just so the record is clear: Is it
23 true that Iredell county is divided in your plan
24 but is not divided in the Nesbitt plan?

25 **A.** That is correct.

1 Q. Why was it necessary to divide Iredell county in
2 your plan?

3 MR. FARR: Objection.

4 SENATOR RUCHO: Well, it seems like there
5 is a different podding between the two maps, so in
6 reality, we're part of a five pod versus a two in
7 that circumstance.

8 And then if you look at Catawba and
9 Lincoln, that is a five that is splitting Catawba
10 where we didn't split Catawba, so reality is it was
11 a difference in podding.

12 BY MR. SPEAS:

13 Q. Your decision to -- or Hofeller's decision to
14 divide Iredell county was not the result of any
15 Voting Rights Act considerations, was it?

16 MR. FARR: Objection.

17 SENATOR RUCHO: I don't believe it was
18 dealing with the Voting Rights Act. It was
19 strictly in podding. And if you look at the maps
20 with all the counties surrounding it, ours leaves
21 two-county pods all around it where it doesn't
22 appear to be that same value in dealing with the
23 Stephenson decision.

24 BY MR. SPEAS:

25 Q. Let me make sure I'm clear.

1 MR. FARR: Could you -- before you ask him
2 a question, may I just take a second with the
3 witness?

4 MR. SPEAS: Sure.

5 Would you record the conference.

6 (Discussion held off the record between

7 Mr. Farr and Senator Rucho: 11:53 to 11:54 a.m.)

8 BY MR. SPEAS:

9 Q. Now, that you've had a conference with your
10 counsel, do you want to answer my question?

11 A. Would you repeat the question again.

12 Q. Well, I don't think there was a question on the
13 table before Mr. Farr asked to talk to you, but
14 here's my question:

15 I understand your testimony to be that
16 Iredell county is divided in your plan entirely
17 because of clustering that you put together.

18 A. It would be a combination of clustering. And as I
19 alluded to earlier, we had a legal set of criteria
20 that we gave to Mr. Hofeller in drawing these
21 districts where that same legal criteria which
22 specifically dealt with not only the Voting Rights
23 Act and the Stephenson blending or harmonizing
24 Strickland but also majority-minority districts, so
25 you would automatically see a different type of

1 podding by following the law as we did versus by
2 not.

3 **Q.** Now, let's go to Rowan county. Is it accurate that
4 Rowan county is divided in your plan and not
5 divided in Senator Nesbitt's plan?

6 **A.** That is accurate.

7 **Q.** Can you tell me why Rowan county is divided in your
8 plan?

9 **A.** It all goes back to my last comment was that if you
10 follow the law as was described with Stephenson,
11 Strickland, the Voting Rights Act,
12 majority-minority districts, you will see a
13 difference in how they're podded together.

14 And in this circumstance, they may be split
15 because of the county grouping, but in others where
16 we have the one and two -- I think we have 11
17 two-county pods and then four and three that we
18 complied more with what the Whole County Provision
19 and the Stephenson requirement would be, so, you
20 know, the reality is you can't compare apples and
21 oranges if you're using a different set of rules,
22 one being legal and one not being legal.

23 **Q.** So is it accurate, Senator, that the need to create
24 as many two-pod clusters as possible was a
25 determining factor for Mr. Hofeller in drawing

1 districts?

2 MR. FARR: Objection.

3 MR. SPEAS: That's a bad question.

4 BY MR. SPEAS:

5 Q. Did you instruct Mr. Hofeller that he should
6 attempt to maximize the number of two-county
7 clusters in drawing the Senate and the House plans?

8 MR. FARR: Objection.

9 You can answer the question.

10 SENATOR RUCHO: Mr. Hofeller -- the
11 directions we gave Mr. Hofeller were to follow the
12 Voting Rights Act, blending it and trying to get
13 the Whole County Provision of the Stephenson in
14 line, harmonizing it, following Strickland with the
15 majority-minority districts that were originally
16 discussed.

17 BY MR. SPEAS:

18 Q. And Mr. Hofeller went away and developed a plan and
19 he came back with a plan and you approved the plan?

20 A. There's no such thing as coming back with a plan.
21 It's a continuation of trying to make one county
22 pod fit together. It's not like some magic thing
23 falls out of the sky. It's an iteration of a
24 number of plans as you're moving through the
25 process.

1 Q. Now, going back to Rowan county for just a minute,
2 it would be accurate, would it not, Senator Rucho,
3 that there are no Voting Rights Act reasons for
4 dividing Rowan county?

5 MR. PETERS: Objection.

6 MR. FARR: Objection.

7 SENATOR RUCHO: The podding that would be
8 required in that specific area of Rowan county
9 probably would have been generated because, as I
10 mentioned earlier, there is -- what affects one
11 districts will affect it across the state and there
12 is a likelihood that by following the law it would
13 have made that kind of a podding arrangement in
14 Rowan, Iredell and Davie county.

15 BY MR. SPEAS:

16 Q. So following your train of reasoning, the Voting
17 Rights Act required pods to be drawn in a
18 particular way, the pod in which Rowan county was
19 included required Rowan county to be divided?

20 MR. PETERS: Objection.

21 MR. FARR: Objection.

22 SENATOR RUCHO: No, sir. What that means
23 is as you draw the Voting Rights Act district under
24 the law the way we believe and apparently the
25 Department of Justice believed was legal, that

1 there is a -- oh, I'm trying to -- you push one
2 part of a balloon and another one pops over. I'm
3 trying to remember the right term for --

4 MR. SPEAS: Mr. Farr used it before.

5 MR. FARR: What was it?

6 SENATOR RUCHO: There was a --

7 MR. FARR: I could give it to you right
8 now but --

9 SENATOR RUCHO: There was a term and, I'm
10 sorry, I can't -- I can't remember it, but the
11 effect is on the rest of the counties is reflected
12 by following the Voting Rights Act in the
13 Stephenson criteria being harmonized together and
14 that affect -- God darn it, I wish I could remember
15 that one.

16 BY MR. SPEAS:

17 Q. It will come to you.

18 Senator, let's look at Randolph county.

19 A. Yes, sir.

20 Q. Is Randolph county divided in your plan and not
21 divided in Senator Nesbitt's plan?

22 A. That is correct.

23 Q. And why did you divide Randolph county in your
24 plan?

25 A. Well, under the way we structured our plan in

1 taking into consideration what we just talked about
2 as far as the Voting Rights districts that were
3 formed, surrounding Randolph county, we had Yadkin
4 and Forsyth being the two-county pod. We had
5 Rockingham --

6 **Q.** It's a long way from Yadkin county to Randolph
7 county.

8 **MR. PETERS:** Objection.

9 **SENATOR RUCHO:** No, sir, one county
10 affects the other one depending on how you pod it,
11 so if you look at it --

12 **BY MR. SPEAS:**

13 **Q.** Let me just interrupt for a moment. It's probably
14 a hundred miles from Yadkin county to Randolph
15 county, isn't it?

16 **A.** I have no clue.

17 **Q.** Well, I've driven it and it's a long way.

18 **A.** Well, reality is the map is being --

19 **MR. FARR:** You had a bad car.

20 **SENATOR RUCHO:** The map is the entire
21 state and it isn't just specific counties that
22 we're looking at it. You have to look at it across
23 the entire state, and under those circumstances, if
24 you look at what surrounds the Randolph county as
25 far as, you know, two-county pods, you've got

1 Yadkin-Forsyth, you get Guilford-Rockingham, you
2 get Davidson-Montgomery, you've got Orange-Chatham,
3 so in reality it almost forces that kind of --

4 BY MR. SPEAS:

5 Q. This leads me to ask you this question again. Did
6 you instruct Hofeller that he should maximize the
7 number of two-county pods in drawing his plan?

8 MR. FARR: Objection. That's been
9 answered several times.

10 SENATOR RUCHO: Yes, sir, that is part of
11 the direction.

12 BY MR. SPEAS:

13 Q. Did you tell him that?

14 MR. FARR: Objection.

15 SENATOR RUCHO: We made it clear that he
16 would have done that and that's what we attempted
17 to achieve.

18 BY MR. SPEAS:

19 Q. Senator, I don't mean to be difficult, but I want
20 to ask this very plainly. Did you say,
21 "Mr. Hofeller, I want you to maximize the number of
22 two-county pods in drawing the Senate plan"?

23 MR. FARR: Objection.

24 MR. PETERS: Objection.

25 SENATOR RUCHO: Mr. Speas, all I can say

1 to you is that we followed the Stephenson criteria
2 in forming this, and that is one of the directions
3 that we would move, and by following the law, which
4 we told Mr. Hofeller to do, this is the result we
5 were able to get for it.

6 BY MR. SPEAS:

7 Q. Let me ask the question this way: Did you instruct
8 Mr. Hofeller that in drawing the Senate plan it was
9 more important to create two-county pods than to
10 keep counties whole?

11 MR. PETERS: Objection.

12 MR. FARR: Objection.

13 SENATOR RUCHO: The only county that
14 allowed for a single county being whole would have
15 been Mecklenburg because of the ideal population,
16 and then as you saw in the chart that you gave us
17 before, then we're talking about 11 two-county
18 combinations and then so forth.

19 You know, the effort has been, as I told
20 you before, that we are -- that we told
21 Mr. Hofeller to achieve the very best possible in
22 trying to blend Stephenson, the Voting Rights Act,
23 Strickland and making sure that we achieved as many
24 two-county pods as we can get and then three and
25 then four based on what is left for us after

1 establishing the Voting Rights Act district.

2 BY MR. SPEAS:

3 **Q.** Let's look at Lenoir county, please. Senator, is
4 it true that Lenoir county is divided in your plan
5 and not in Senator Nesbitt's plan?

6 **A.** That is correct.

7 **Q.** And why is Lenoir county divided in your plan?

8 **A.** Well, it's a good example of what we talked about
9 before, Mr. Speas, where District Number 5 is a
10 Voting Rights Act district, and the result is the
11 division of Lenoir and Wayne and Pitt.

12 So in essence, by trying to deliver a
13 Voting Rights Act district where a former
14 senator -- African American senator does reside,
15 that is the result of it.

16 **Q.** Would you look at Nash county. Is Nash county
17 divided in your plan and not in Senator Nesbitt's
18 plan?

19 **A.** That is correct.

20 **Q.** And why is Nash county divided in your plan?

21 **A.** District Number 4 a majority-minority district and
22 it is -- the pod is constructed based on, you know,
23 what would have allowed us to have a
24 majority-minority district in District Number 4.

25 I think Senator Jones resides in that

1 district as an incumbent, and we did tell
2 Mr. Hofeller we wanted to be sure that every
3 minority incumbent maintain their position there,
4 and under that circumstance, the result is a split
5 of Nash as it comes down into that pod.

6 **Q.** And is Pitt county split in your plan and not in
7 Senator Nesbitt's plan?

8 **A.** Yes, sir.

9 **Q.** And why is Pitt split in your plan?

10 **A.** Because we complied with the law in Senate
11 District 5.

12 **Q.** Which part of the law?

13 **A.** I'll repeat it again. The Voting Rights Act with
14 Whole County, Stephenson decision delivering a
15 harmonization, Strickland and making sure that the
16 population was ideal.

17 **Q.** Now, let's do two at once. Now, is it true that
18 Wayne county and Wilson county are divided in your
19 plan and not in Senator Nesbitt's plan?

20 **A.** Wayne county, yes, sir.

21 **Q.** Why is Wayne county divided in your plan and not
22 in -- why is Wayne county divided in your plan?

23 **A.** Wayne county is divided in our plan because we
24 followed the law as it was described with
25 Stephenson, Voting Rights Act, blend,

1 harmonization, Strickland decision, the
2 majority-minority districts as the law requires us
3 to do, and that is the result of Wayne county being
4 split because of the majority-minority district in
5 number 5.

6 **Q.** And the same is true of Wilson county, it's not
7 divided -- it is divided in your plan and not in
8 Nesbitt's plan and it's divided in your plan for
9 the reasons you've explained?

10 **A.** Yes, sir.

11 **Q.** Senator, let me ask you this question: I hear you
12 testifying and I want to know whether this is
13 correct that you left it to Mr. Hofeller to
14 determine what the law required.

15 MR. PETERS: Objection.

16 MR. FARR: Objection.

17 SENATOR RUCHO: Not true, no, sir.

18 BY MR. SPEAS:

19 **Q.** Not true?

20 **A.** No.

21 **Q.** But you told him to comply with the law and you
22 didn't give him much other direction and he comes
23 back with a plan and you accept it?

24 MR. PETERS: Objection.

25 MR. FARR: Objection.

1 BY MR. SPEAS:

2 Q. Isn't that what happened?

3 A. No, sir.

4 MR. FARR: Objection.

5 SENATOR RUCHO: The criteria has been laid
6 out as it has been on the public statement and what
7 we've discussed all day.

8 BY MR. SPEAS:

9 Q. When you sent Hofeller away to draw the maps, did
10 you say, "Now, Hofeller, when you come back with a
11 plan, I want you to create" -- well, let me strike
12 that question.

13 Let me ask you this, Senator Rucho: Would
14 you agree based on your experience that in the
15 western part of North Carolina and in the Piedmont
16 part of North Carolina that there is no reason to
17 divide a county because of the Voting Rights Act?

18 MR. PETERS: Objection.

19 MR. FARR: Objection.

20 SENATOR RUCHO: I believe, Mr. Speas, that
21 Mecklenburg county is a Section 2 as is all of
22 those areas are, and that being said, I think -- I
23 think the fact is they're all Section 2 counties in
24 that circumstance and I don't know if I can agree
25 with your question.

1 BY MR. SPEAS:

2 Q. You believed that the Gingles decision required
3 Voting Rights districts to be drawn in Mecklenburg
4 county?

5 MR. FARR: Objection.

6 SENATOR RUCHO: I believe from my
7 understanding in talking with -- on the base of the
8 record, speaking with counsel that the Gingles
9 decision still is in effect in North Carolina,
10 especially with the fact that there is clear
11 evidence from many parties on racial polarization,
12 and under that circumstance, it is -- well, repeat
13 that question one more time if you would.

14 BY MR. SPEAS:

15 Q. The question was simply whether you believe the
16 Gingles decision required you to draw Voting Rights
17 district in Mecklenburg county.

18 MR. FARR: Objection.

19 SENATOR RUCHO: Yes, sir.

20 BY MR. SPEAS:

21 Q. And you base that belief on the advice you received
22 from counsel?

23 MR. FARR: Objection.

24 I instruct you not to answer that.

25 BY MR. SPEAS:

1 Q. Did you reach that conclusion based upon advice
2 provided you by Mr. Hofeller?

3 A. No.

4 Q. Did you base that decision based on advice provided
5 to you by Mr. Morgan?

6 A. No.

7 Q. Mr. Oldham?

8 A. No.

9 Q. Mr. Raupe?

10 A. No.

11 Q. Did you base that decision on advice you received
12 from Dr. Brunell?

13 A. I believe Dr. Brunell pretty much validated what
14 Ms. Earls had presented and what Mr. Block had
15 presented in regards to racial polarization in
16 North Carolina and still in existence that pretty
17 much holds that the Gingles case still is in effect
18 in North Carolina.

19 Q. Have you ever met Dr. Brunell?

20 A. No, sir.

21 Q. Have you ever talked to him on the phone?

22 A. No, sir.

23 Q. Do you know his credentials?

24 A. I viewed them.

25 Q. And did the legislature contract with Dr. Brunell?

1 **A.** My best recollection is that it was paid through
2 Ogletree, but I think that's correct.

3 MR. FARR: Are we approaching a break
4 point?

5 MR. SPEAS: Sandwiches are going to be
6 ready at some point, and instead of separate menus,
7 I think there's just a bunch of sandwiches out
8 there. I don't know whether they're here, but I
9 can certainly check into.

10 (Brief Recess: 12:13 to 12:30 p.m.)

11 MR. SPEAS: Could you mark this, please, as
12 an exhibit.

13 (WHEREUPON, Exhibit 211 was marked for
14 identification.)

15 BY MR. SPEAS:

16 **Q.** Senator, we're putting in front of you an exhibit
17 marked 211, and I would ask you to take a moment
18 and review this and see if this in fact is a copy
19 of the presentation made to the General Assembly at
20 a public hearing on June 23, 2011, by Ms. Earls at
21 a presentation you referred to earlier in your
22 testimony?

23 MR. FARR: Eddie, I don't want to testify,
24 but it's not.

25 MR. SPEAS: Okay.

1 MR. FARR: I think this may have been
2 submitted at a subsequent meeting, but it was
3 another statement.

4 BY MR. SPEAS:

5 Q. Have you reviewed this statement?

6 A. No, sir, not completely.

7 Q. Okay. Take your time and review it.

8 A. (Witness complying.)

9 Q. Have you had an opportunity to review it, Senator
10 Rucho?

11 A. Yes, sir.

12 Q. And this -- have you seen this document before?

13 A. You know, I don't -- I don't remember reading it.

14 Q. Do you recall Ms. Earls coming to the legislature
15 to the public hearing on June 23, 2011, and making
16 a presentation?

17 A. Yes, sir.

18 Q. And reading this, does this refresh your
19 recollection as to the things Ms. Earls said on
20 that occasion?

21 A. I think Ms. Earls had been to the first one we had
22 and then also one that we had a public hearing,
23 too, if I'm not mistaken, so there were a couple of
24 times I heard Ms. Earls' position on this in
25 addition to a response that we had sent out to all

1 the stakeholders that -- what they thought we
2 should look for.

3 Q. And is one of those occasions on June 23rd?

4 A. As best I can remember. I don't remember what day
5 she was there.

6 Q. Is it accurate that the General Assembly requested
7 that persons making oral presentations also provide
8 the legislature with a written copy of their
9 presentation?

10 A. I don't believe it was a requirement.

11 Q. But it was --

12 A. It may have been done and we'd have to check with
13 staff on that.

14 Q. By June 23rd you had already released your VRA
15 districts, correct?

16 A. Yes, on the 17th.

17 Q. And following the release of the Voting Rights
18 districts, your plans were sharply criticized by
19 African American members of the North Carolina
20 General Assembly, correct?

21 MR. PETERS: Objection.

22 SENATOR RUCHO: I don't agree with
23 "sharply criticized."

24 BY MR. SPEAS:

25 Q. Okay. Criticized.

1 **A.** They may not have believed in it, but they -- I
2 guess there's a difference of opinion.

3 **Q.** Dan Blue, Senator Dan Blue indicated on the floor
4 of the Senate that these plans packed black voters,
5 correct?

6 **A.** Yes, he did make that statement.

7 **Q.** And in fact, one of the public statements that you
8 and Senator or Representative Lewis issued was in
9 response to those comments on the -- by Senator
10 Blue and others, correct?

11 **A.** On the floor and/or the committee meeting and also
12 in the media, yes, sir.

13 **Q.** And following those criticisms by African American
14 members of the legislature and others, did you make
15 any changes in your plans to accommodate those
16 concerns?

17 **A.** Between the Voting Rights Act, number one, and a
18 subsequent plan, you're talking about the VRA maps
19 that we talked about earlier?

20 **Q.** Yes.

21 **A.** Repeat that question one more time, please, sir.

22 **Q.** Following the testimony by Ms. Earls reflected in
23 the -- in Exhibit 211 in front of you and following
24 the criticism -- and following the criticism voiced
25 by Senator Blue and others of your plan, your

1 Voting Rights plan, the Voting Rights district
2 plan, did you make any changes in the Voting Rights
3 districts to reflect those comments and criticisms?

4 **A.** Based on the input that we got from public
5 hearings, from discussion, there were some changes
6 made.

7 **Q.** Can you identify those changes for me looking --

8 **A.** One of them --

9 **Q.** -- looking at Exhibit 199 in front of you?

10 **A.** One of them we talked about earlier is the
11 difference between -- in District 21 where the
12 two-county pod was there, and we worked with all of
13 Hoke keeping it a whole county and then a portion
14 of Cumberland, that is one of them that we did, one
15 that I know of.

16 **Q.** Looking at Exhibit 199, the one change that you
17 would recall at this point is in District -- Senate
18 District 21; is that correct?

19 **A.** As we mentioned before, there were many other minor
20 changes made and many of them could have been in
21 response to comments that were made, but pretty
22 much the same counties which are designed -- which
23 we talked about the Voting Rights Act, but there
24 are some differences.

25 **Q.** And, Senator Rucho, do you recall that in the vote

1 on your plan in the Senate no African American
2 member of the Senate voted for your plan?

3 **A.** Yes, sir.

4 **Q.** And do you recall that in the vote in the Senate on
5 your Congressional plan that no African American
6 member of the Senate voted for your plan?

7 **A.** I remember it in the Senate vote, yes, sir.

8 **Q.** And are you aware that in the vote on your plan --
9 your Senate plan in the House no African American
10 member of the House voted for your plan?

11 **A.** I don't know that answer.

12 **Q.** And are you aware that in the vote in the House on
13 your Congressional plan that no African American
14 member of the House voted for the plan?

15 **A.** I don't remember that.

16 **Q.** And are you aware that in the vote in the House on
17 Representative Lewis's House plan that no African
18 American member of the House voted for that plan?

19 **A.** If it occurred in the House, I don't remember the
20 vote.

21 **Q.** Now, you have testified that Ms. Earls did appear
22 as you recall and testified on June 23, 2011. You
23 indicated that she came on another occasion. Do
24 you remember when that was?

25 **A.** I believe she spoke to a public hearing in Raleigh,

1 and I think actually we extended some additional
2 time, and I can't remember if it was for the first
3 or for -- I'm not sure, but there have been a
4 couple of occasions.

5 **Q.** All right. Senator, I didn't ask you this in the
6 beginning of your deposition but let me ask you
7 now. In preparing for your deposition, what
8 materials did you review?

9 **A.** Volumes of material. I tried to read all of the
10 public statements. I tended to try to read the
11 affidavit. I tried to read -- well, there were a
12 number of exhibits that I, you know, reviewed so
13 best I can recollect. I mean, there was a lot of
14 reading to be done.

15 **Q.** And a part of the information before you and the
16 legislature in considering these plans was the
17 public hearing comments, correct?

18 **A.** Yes, sir. When I was in attendance, I was able to
19 hear the public comments.

20 **Q.** And you had public hearings around the state?

21 **A.** Yes, sir.

22 **Q.** And you attended many of those public hearings?

23 **A.** Yes, sir.

24 **Q.** And in fact, a transcript was made of each of those
25 public hearings?

1 **A.** They -- yes, we did have court reporters there.

2 Yes, I'm assuming that was done.

3 **Q.** And the transcripts of those public hearings were
4 made a part of the legislative record?

5 **A.** And I believe sent to the Department of Justice as
6 part of our submission.

7 **Q.** And those comments of citizens at those public
8 hearings were one of the things you weighed?

9 **A.** I'm sorry. Repeat.

10 **Q.** One of the things you weighed in consideration of
11 your plan?

12 **A.** One of many.

13 **Q.** Before coming here today, did you talk to anybody
14 other than Mr. Farr about this deposition?

15 **A.** This one?

16 **Q.** Yes. Did you talk to Representative Lewis?

17 **A.** Not since last evening. I mean, is that what
18 you're asking?

19 **Q.** Did you talk to him last evening?

20 **A.** No, sir. I hadn't spoke to him since we left
21 together.

22 **Q.** All right. Did you speak to anybody else?

23 **A.** I told my staff that I was going to be here all day
24 with you.

25 **Q.** Okay. Well, I think actually I'm right at the end

1 of my questions. Let me go check to see if the
2 sandwiches are here and let's take a little break.
3 I know Anita's got some questions.

4 (Lunch Recess: 12:46 to 1:28 p.m.)

5 EXAMINATION

6 BY MS. EARLS:

7 **Q.** Senator Rucho, my name is Anita Earls. I represent
8 plaintiffs in the NAACP lawsuit that's been filed.
9 I appreciate your time this afternoon. I promise
10 we'll get you on the road when you need to be, but
11 I do have some questions for you.

12 I want to follow up on a few things that
13 Mr. Speas asked about first, and in particular,
14 I'll start with I believe you testified that prior
15 to releasing the Senate and Congressional maps you
16 met with Senators Jones, McKissick, Graham and
17 White; is that right?

18 **A.** May I answer that?

19 **Q.** Please.

20 **A.** I didn't want to cut you off. I know it was either
21 the day before or the day of. It was real close.
22 It was to get their opinion on their districts.

23 **Q.** So you were showing them the maps that you were
24 intending to release?

25 **A.** Their district maps only, okay, not the full-blown.

1 And, Ms. Earls, I just don't remember what day it
2 was. I know it was at the very beginning of either
3 a day earlier than it came out or the day of it or
4 something.

5 **Q.** Did you meet with any other democratic senators?

6 **A.** I spoke with Senator Robinson. I spoke with -- and
7 that was the Sunday before enactment. We talked on
8 Sunday. I called her and I said, "You know, is
9 there anything I can answer for you," whatever, and
10 that sort.

11 Either I spoke with or talked briefly with
12 Senator Mansfield. I'm trying to remember who
13 else. You did mention McKissick earlier, too,
14 right, Senator McKissick.

15 **Q.** Yes.

16 **A.** I made an effort to reach out to most, if not all,
17 of them.

18 **Q.** To most, if not all, of the democratic senators?

19 **A.** No. Well, to the members of the committee and the
20 black caucus members of the Senate.

21 **Q.** When you spoke on the phone with Senators Robinson
22 and Mansfield, did they have in front of them their
23 districts to look at?

24 **A.** They actually -- I know in Ms. Robinson's case she
25 had already seen the map. This was prior to us

1 returning on July 25 or something like that, so
2 that was available to her early on to the best of
3 my recollection.

4 **Q.** So we should be more precise. When we were talking
5 about the discussions before the districts were
6 released, was this before the June 17 release of
7 the Voting Rights Act districts or before the July
8 release of the House and Senate plans?

9 **A.** My best recollection was not at the VRA portion but
10 it was when the entire map was released and their
11 district was there because there were changes made
12 between the VRA to the end of the next iteration in
13 the map process.

14 **Q.** So all of these discussions, both the in-person
15 meetings and the telephone discussions, happened
16 after the VRA districts had been made public?

17 **A.** They would have seen the map, but I'm not sure if
18 this was the VRA or the other, but they have either
19 been knowledgeable of it or they would have had it
20 in front of them at that point.

21 **Q.** And you may have answered this implicitly, but how
22 did you decide who you were going to speak to on
23 the democratic side?

24 **A.** Well, I mean, in that circumstance, I had my
25 members of the committee, which that was the first

1 priority because I wanted to make sure everybody
2 understood what we were doing, and there was plenty
3 of opportunity to know that, but then secondly I
4 wanted some feedback.

5 I had two meetings with each member of the
6 committee, one prior to any release at all and then
7 the one that they were able to see their district
8 map.

9 **Q.** And did I understand you also reached out to
10 members of the Legislative Black Caucus?

11 **A.** Well, through Senator McKissick. He was the
12 chairman of it. I tried to do most of my
13 communication through him. He made it clear that
14 is who I needed to go through. He was chairman.

15 **Q.** I'm sorry. Was Senator Jones, Graham, Robinson and
16 Mansfield all on the committee?

17 **A.** No. No. Senator McKissick, Senator Jones and
18 Senator Graham were on the committee along with
19 Senator Walters and Senator Nesbitt.

20 **Q.** Let's start with Senator Graham. What do you
21 recall about what he told you about the districts
22 when you met with him?

23 **A.** The first time?

24 **Q.** Yes.

25 **A.** Okay. Because that was prior to -- that was a time

1 when we were having public hearings trying to get a
2 feel as to what their thoughts were dealing with
3 what roughly proportional equal opportunity
4 majority-minority districts as was outlined in the
5 letter that we sent to every one of our senators --
6 and I'll speak to that right now -- outlining what
7 we were looking at as criteria and I wanted some
8 feedback from them on -- on that portion of it.

9 **Q.** Sorry to interrupt you, but was this individual
10 meetings, this first meeting, or was this a group
11 meeting?

12 **A.** No. All individual. We spoke. I just wanted to
13 know candidly what they thought of it, what their
14 belief was, what their understanding was.

15 I think the first -- the first letter we
16 put out trying to engage everybody and say, hey,
17 this is where we're going with this, come back and
18 let's talk feedback on it, and that went to all of
19 the members of the -- at least the Senate and I'm
20 pretty sure it was the General Assembly.

21 And then we just asked questions about what
22 they thought about their districts, what they would
23 like to do differently, if anything, whether it
24 should be majority-minority, you know, and some of
25 them said, "Well, I would like to think about it,"

1 you know, and had very good discussions with them
2 as far as trying to understand what their beliefs
3 would be.

4 **Q.** Just to be clear, you were talking about this
5 letter that you sent out seeking input. Do you
6 have Exhibit 57 in front of you? I can give you
7 one.

8 **A.** I have 57.

9 **Q.** So looking at what's previously been marked as
10 Deposition Exhibit 57, is this the letter you're
11 referring to, letter or e-mail?

12 **A.** That was one of them, and I think I had another one
13 out there that outlined some of the original
14 criteria and asking for some feedback on that, too,
15 and I don't remember, having read a lot of
16 material, but I do remember one letter going out
17 and I just can't remember which one it was.

18 But this was one of the ones that we
19 sent -- let's see. This was the seven question
20 one. This was one to the stakeholders mostly.
21 There was another one that went to the members of
22 the General Assembly.

23 **Q.** And do you know if that was provided in discovery,
24 the one that went to the members of the General
25 Assembly?

1 **A.** As best I can remember, that was part of the
2 record.

3 MR. PETERS: For whatever it would help,
4 it should have been in discovery and it is
5 including in the correspondence.

6 BY MS. EARLS:

7 **Q.** And just to help us locate it, do you happen to
8 remember whether it went out before March 31, 2011,
9 which was the date of the one you were just looking
10 at?

11 **A.** Ms. Earls, I'm sorry, I don't remember the date of
12 it. We had a lot of pieces of information going
13 out.

14 **Q.** Was it roughly about that time, that is, March,
15 early April, or you just don't remember?

16 **A.** I just don't recollect. I'm sorry.

17 **Q.** So going back to the individual meetings that you
18 had seeking input, I started to ask you about
19 Senator Graham, what input you recall receiving
20 from Senator Graham.

21 **A.** Can I ask my attorney a question, if I may.

22 (Discussion held off the record.)

23 BY MS. EARLS:

24 **Q.** To be clear what my question is, I'm just asking
25 you what you recall now what information you got

1 from Senator Graham.

2 **A.** It was broad in the sense that, you know, what
3 their thoughts were similar to questions like, you
4 know, what they think about their district, what
5 they envisioned it should be, areas they may
6 encompass, whether they felt that there should
7 be -- and it's not just a negative, but whether
8 they feel it should be roughly proportional equal
9 opportunity, whether there would be a
10 majority-minority district, some basic questions on
11 what we ended up setting the criteria to on
12 Stephenson.

13 **Q.** Well, my understanding is Senator Graham represents
14 Senate District 40 in Mecklenburg county.

15 **A.** Yes.

16 **Q.** And under the prior redistricting plan, using the
17 2010 Census data, his district was 35.43 percent
18 African American. In the enacted plan, it's
19 51.84 percent African American.

20 My question to you is whether or not
21 Senator Graham indicated to you that he thought in
22 order for him to continue to represent that
23 district or in order for the candidate of choice of
24 African American voters to have a fair opportunity
25 in Mecklenburg county that his district needed to

1 be increased from 35 percent to 51 percent?

2 **A.** I don't recollect him saying exactly that, but, you
3 know, one of the other things I did in the scheme
4 of things is recognized some of your
5 recommendations on the map that you sent us on how
6 Mecklenburg county should be treated.

7 **Q.** Let me ask you about Senator McKissick. He
8 represents Senate District 20 in Durham county. Do
9 you recall -- what do you recall about the -- in
10 this initial meeting the instructions or concerns
11 or anything expressed to you by Senator McKissick?

12 **A.** Well, I think Senator McKissick was -- one of his
13 feelings was I would like to take a look and see
14 what you all are presenting. There was always a
15 position of show me what you got, and that's what
16 it was most of the time.

17 But, I mean, I spoke with Senator McKissick
18 on that and on many other occasions asking for
19 input which we had requested for him as to feedback
20 in how to -- you know, what his belief was and what
21 you would like to see in establishing criteria and
22 how we would work with the Stephenson and Voting
23 Rights Act, Strickland, all of those factors.

24 It would have been better had we gotten
25 probably more information from it, but there was

1 kind of sparse information.

2 **Q.** Well, I'm still trying to understand more clearly
3 what information they did give you. You have said
4 Senator McKissick wanted to see the maps first.

5 **A.** Yes.

6 **Q.** But any other information --

7 **A.** Nothing specific to say he would do one or the
8 other to my recollection.

9 **Q.** Senate District 20 went from 44.64 percent, again,
10 using the 2010 Census data, to in the newly drawn
11 plan it's 51.04 percent.

12 Senator McKissick didn't tell you that in
13 order for the voters in his district and in
14 particular African American voters to continue to
15 have a chance to elect their candidate of choice
16 that his district needed to increase to 51 percent
17 black?

18 **A.** I don't remember him saying that it should increase
19 to that level, but, you know, in reality, that is
20 what the -- that is what our consistent policy was
21 in regard to managing that, especially ones that
22 were determined to have, you know, racial
23 polarization according to the expert testimony that
24 we received throughout the entire process.

25 **Q.** Well, let me ask you about any of the meetings that

1 you had, then, after the various senators that
2 you've referenced you met with or had telephone
3 conversations with, after they saw the Voting
4 Rights Act districts that were being proposed, what
5 do you recall about what they said about those
6 districts?

7 **A.** I think probably the time that I would have gotten,
8 as best I can remember, would have been time
9 probably they saw the entire map with those Voting
10 Right Act or Voting Rights districts as part of the
11 overall scheme of things, but to the best of my
12 recollection, I don't think anybody said they
13 didn't like it. They may not have said they liked
14 it, but they didn't say they didn't like it. It
15 was kind of a wait-and-see type attitude, I
16 thought.

17 **Q.** Well, when you saw what maps they proposed, did
18 that give you an indication of what they considered
19 would be required to comply with the Voting Rights
20 Act?

21 **A.** Well, when we saw the maps that they proposed, it
22 was the day before we were voting on it, so what
23 opportunity would we have to really input that data
24 into the system.

25 We gave plenty of opportunity to have them

1 participate up front and, unfortunately, for
2 whatever reason, there was no sharing of
3 information. And it was actually given the Monday
4 that we were ready to take on those -- the debate
5 in the Senate and the bills would be introduced.

6 **Q.** So you're saying that by that point there was
7 nothing you could do to change the map that you
8 were going to pass?

9 **A.** Well, it isn't a matter of saying we weren't going
10 to have time to change it. That was opportunity --
11 they gave us no opportunity to include what their
12 beliefs were and then, secondly, the maps came back
13 as it was given to us by, you know, Senator
14 McKissick specifically and it came back that it
15 didn't even get close -- you know, all of our
16 public statements said that it should take into
17 consideration majority-minority districts, it
18 should have taken into consideration the blending
19 of the Voting Rights Act and Stephenson decision,
20 it should have taken into consideration, you know,
21 the other criteria that we established.

22 So in reality, they saw what was there.
23 They never commented about it and yet they came
24 back on that Monday at the 11 and a half hour with
25 maps that didn't even comply with what they knew

1 were our criteria.

2 **Q.** If I'm understanding you correctly, then, for the
3 Senate map -- now just talking about the Senate
4 map -- it was your belief that the Voting Rights
5 Act required you to draw a majority-minority
6 district wherever the population was compact
7 enough -- wherever the black population was compact
8 enough to do that?

9 MR. FARR: Objection.

10 SENATOR RUCHO: It was where it was
11 cohesive and a compact population. And we also
12 looked at the factor of whether there was either an
13 incumbent there, African American incumbent, or
14 whether there was one there prior to that since one
15 or two of them were defeated. So it wasn't just
16 one issue. It was a blending of all of them to
17 determine if that was a, you know, feasible way to
18 meet the legal requirements we had before us.

19 BY MS. EARLS:

20 **Q.** Well, was there anywhere in the state where it was
21 geographically possible to draw a majority black
22 district but you didn't draw one there?

23 **A.** The ones that we did draw presenting the nine VRA
24 districts that we presented on our VRA map, and the
25 only one that we weren't able to deliver a

1 majority-minority district was the one in Forsyth
2 county. The population didn't allow it. So we
3 worked with a coalition district.

4 **Q.** But my question is: In addition to the ones that
5 you did draw, was there anywhere in the state where
6 it was possible to draw an additional majority
7 black district but you didn't draw it?

8 **A.** As best I can recollect, there was no other area
9 that had the compact and cohesive population that
10 would have allowed it to be drawn, at least the
11 best I can recollect.

12 I mean, that was really the determining
13 factor of it, you know. It wasn't just a matter of
14 putting one out there. It was a matter if it fit
15 the criteria.

16 **Q.** If I'm understanding your answer, you drew a
17 majority black district everywhere that it was
18 geographically possible in the state?

19 MR. FARR: Objection.

20 SENATOR RUCHO: You're using the term
21 "geographically possible."

22 BY MS. EARLS:

23 **Q.** Where the black population was compact enough and
24 large enough?

25 **A.** Where all of the criteria met, you know, that is

1 how we made that decision. It isn't like one
2 answer, you know, a cohesive population. It was
3 where all of the factors were involved, not only
4 Stephenson but whether Gingles and Section 2
5 counties and things of that sort were required and
6 that's how we would have made that judgment.

7 **Q.** I understand, but I'm asking you -- you haven't
8 been able to identify for me any place in the state
9 where those -- where the black population was
10 geographically compact enough, but the other -- in
11 your view, the other criteria were met but you
12 didn't draw a black district?

13 MR. FARR: Objection.

14 SENATOR RUCHO: My only answer is if it
15 didn't fit all that criteria, we wouldn't have put
16 it there and apparently it didn't so it didn't
17 exist.

18 BY MS. EARLS:

19 **Q.** And then you did -- you rejected the districts
20 proposed by the Legislative Black Caucus at least
21 in part because they didn't draw majority black
22 districts everywhere it was possible to?

23 MR. PETERS: Objection.

24 MR. FARR: Objection.

25 SENATOR RUCHO: I'm not sure that we

1 rejected it. I think we're in the same locations.

2 I don't have their map in front of me here.

3 BY MS. EARLS:

4 Q. I thought your testimony just a moment ago was that
5 they introduced their plan at the last minute, but
6 in addition, their plan didn't comply with the
7 legal criteria that you had set out.

8 A. Okay, but what part am I not understanding?

9 Q. So my question is you're saying that their plan at
10 least in part didn't comply with your understanding
11 of what it took to comply with the Voting Rights
12 Act.

13 A. What was legally required of us.

14 Q. Right.

15 A. And if it was legally required of us, then you
16 would have to assume they would drawn a similar map
17 unless they disagreed with that.

18 Q. Their map did not have as many majority black
19 districts as yours, right?

20 A. All I can say is we used your map as an example of
21 what we felt would be a reasonable way of meeting
22 the requirements to pass the pre-clearance of the
23 Department of Justice.

24 Q. But how is that even possible when our map was
25 submitted to you on June 23rd after you had already

1 released the Voting Rights Act district maps on
2 June 17th?

3 **A.** There were other changes in the map in the areas.

4 And I think we complied pretty closely with your
5 map as far as areas are concerned. Now, whether
6 the percentages were in BVAP, there may be some
7 disagreement, but I think you had five of your nine
8 districts with in excess of 50 percent so, I mean,
9 we go -- your testimony, which I took a lot of
10 interest in because you're a whole lot smarter than
11 I am about that, you know, that was part of how we
12 established the criteria based on the broad record.

13 **Q.** Let me go back and ask you about the criteria. And
14 I understand your testimony from earlier today that
15 the criteria is outlined in the joint public
16 statements that were made.

17 **A.** Yes, ma'am.

18 **Q.** But those statements -- am I correct that those
19 statements were written within a day or two or
20 three days of them being issued?

21 **A.** Well, I think it was a matter of putting together
22 over time as we had those series of public hearings
23 early on when we were trying to fact find and get
24 input from the stakeholders, one of which you
25 participated in, and then as that was coming

1 forward, I mean, they were refined and determined
2 that this is a criteria that we should follow to
3 meet one of our critical goals and that was to come
4 forward and get a DOJ pre-clearance approval.

5 **Q.** So let's look at the first statement. I believe
6 these are Exhibit 55. Do you have that in front of
7 you?

8 **A.** I don't know if I've got that. Thank you.

9 **Q.** Am I correct that the June 17, 2011, map, is that
10 the first joint public statement that embodies the
11 criteria that you followed in drawing these
12 districts?

13 **A.** I know this was the public statement that we
14 submitted to a public statement, but I think -- and
15 I could be in error, but I thought we also outlined
16 it very briefly in a memo, e-mail or something to
17 the members of the General Assembly letting them
18 know what we were looking at so we could get some
19 feedback on that, but I don't have the date of
20 that, I'll just tell you that.

21 **Q.** Do you have a rough recollection of the time
22 period?

23 **A.** Well, it would probably be prior to that when we
24 were trying to gather information and trying to
25 say, hey, we're looking at it in this manner, you

1 know, what is your feedback on it, do you agree, do
2 you disagree, but again, I don't know the date.

3 **Q.** So this earlier -- this earlier communication to
4 members of the General Assembly outlining what you
5 were looking at, who prepared that?

6 **A.** I would assume that Mr. Woodcox would have done so.

7 **Q.** And then yesterday we heard testimony that this
8 June 17th memo was also prepared by Mr. Woodcox and
9 then reviewed by you and Mr. Lewis, Representative
10 Lewis.

11 **A.** Yes. Mr. Woodcox was our -- was my counsel to the
12 Senate in trying to -- we worked together with
13 Representative Lewis, in essence, since our
14 policies were clear and hopefully similar in
15 nature, then that was what Mr. Lewis was -- or
16 excuse me -- Mr. Woodcox was able to present for
17 both Representative Lewis and myself along with the
18 fact that we did present early on the Legislator's
19 Guide which had a number of areas listed, not so
20 much specifically to say that this is the criteria,
21 but in essence to say that we will be following the
22 Stephenson criteria decisions.

23 **Q.** The June 17, 2011, memo, do you recall or do you
24 know when the first draft of this was completed?

25 **A.** First draft?

1 Q. Yes.

2 A. No, ma'am.

3 Q. Do you recall how much in advance of June 17th you
4 first reviewed it?

5 A. There was the redistricting going on. There was
6 the budgeting going on. There was a lot of
7 activity going on. And I have to tell you, I don't
8 remember any specific date. We had a lot of
9 activity happening at that time.

10 Q. This statement, for example, on page 3 refers to
11 the 2011 House plan recommended by Chairman Lewis,
12 then it goes on to discuss features of the
13 different districts in the proposed plan.

14 You had to have drafted -- this had to have
15 been drafted after those plans were drafted,
16 correct?

17 A. What page are you on specifically, please?

18 Q. Well, for example page 3.

19 A. Okay. Whereabouts?

20 Q. If you look -- I was looking at the second sentence
21 of the last full paragraph on that page.

22 "The 2011 House plan, recommended by
23 Chairman Lewis, consists of 24 majority African
24 American House districts and two additional
25 districts in which the total black voting age

1 population percentage exceeds 43 percent."

2 Have I read that --

3 **A.** That was just before the time that we submitted the
4 VRA maps, correct. So my gut feeling is that was a
5 decision made and presented for public review.

6 **Q.** But my question to you is given that this document
7 discusses those districts, they had to have been
8 drawn before this document was drafted.

9 **A.** Well, conceptually, if we were able to identify the
10 locations that they were going to be based upon
11 existing incumbency and other areas that we had
12 talked about earlier dealing with the cohesive and
13 compact African American population, you know,
14 those were some benchmarks that we were going to
15 try to shoot for from Day One, but to say that
16 they're done -- they may have been roughed out, I
17 just can't recollect.

18 I know there was activity going on in the
19 sense that you just -- you can start doing your
20 work and then refine it accordingly based upon
21 input you get. This was designed so people would
22 have a say in what's going on and also following
23 what is expected of us as far as Stephenson, and
24 that is drawing the VRA districts first with the
25 harmonizing effect of the Whole County.

1 Q. I'm trying to understand when this document that
2 was released on June 17, 2011, might have first
3 been drafted.

4 A. I don't know.

5 Q. Let's look at the next document in Exhibit 55. And
6 at the top --

7 A. Which one, please?

8 Q. I'm sorry. The next document. So it starts --
9 this is the statement regarding the proposed VRA
10 districts.

11 A. Okay.

12 Q. The first sentence is "In anticipation of the
13 public hearing scheduled for June 23, 2011."

14 A. Yes.

15 Q. And the statement -- the rest of that sentence:
16 "We want to correct several erroneous statements
17 that have appeared in the news media regarding our
18 proposed Voting Rights Act districts."

19 This statement had to have been drafted
20 sometime after the proposed VRA districts were made
21 public, correct?

22 A. On the 23rd, yes, ma'am. When was it released? It
23 was released either the 22nd or the 23rd. That's
24 what it says in the upper right-hand corner.

25 Q. This had to have been drafted sometime after

1 June 17th when the VRA districts were released.

2 **A.** It was between the 17th and the 23rd.

3 **Q.** Let's look at the next one. This is the July 1st
4 statement, and this may not be in chronological
5 order. So the July 1, 2011, statement, do you have
6 any recollection of when that was first drafted?

7 **A.** No, ma'am.

8 **Q.** Was it after the previous statement, that is, after
9 June 22nd?

10 **A.** Well, I would have to say to you that it would be
11 after that because of the fact that it was
12 distributed on July 1st at the time we were going
13 to -- that we submitted the Congressional maps for
14 public review. To give you an exact date between
15 the 23rd and the 1st of July, I couldn't begin to
16 guess.

17 **Q.** The next statement is the July 12, 2011, statement.

18 **A.** That's when the legislative maps were put out for
19 public review.

20 **Q.** And it was drafted sometime after the July 1st
21 statement?

22 **A.** The VRA districts were out earlier, and between
23 that period of time and where we would have gotten
24 public input and when it was released has to be the
25 time period that that was worked on, I'm sure.

1 Q. And then the last statement in this exhibit is --
2 at the top it says 7-19-11 Joint Statement
3 regarding the release of Rucho-Lewis Congress 2.

4 MR. FARR: There's a handwritten note up
5 there.

6 BY MS. EARLS:

7 Q. This first sentence says, "On July 1, 2011, we
8 released for public comment our first proposed
9 Congressional Redistricting plan."

10 Was this statement drafted after the
11 July 12th statement?

12 A. We had all of these plans going on for a period of
13 time, and in a sense from when the original
14 Congressional map was sent out and we got feedback
15 from a number of people, I'm sure between that
16 point forward and when this was released I believe
17 on 7-19, that would have been the period of time
18 that that information would have been reviewed and
19 determined how we would make our maps comply with
20 the law as required of us and try to take into
21 consideration any of the comments that would come
22 from it.

23 And if you remember correctly, Congressman
24 Butterfield's letter had a large impact on how
25 these maps -- the Congressional map, which is

1 Rucho-Lewis Congress 2, were drawn.

2 And I finally remembered the word that
3 whenever a map is done, you have that domino
4 effect. I should have helped you there, Mr. Speas.

5 **Q.** If the original maps for the Rucho-Lewis
6 Congress 1, they were released on July 1st, 2011,
7 so sometime between July 1st, 2011, and July 19,
8 2011, the statement that you're looking at now
9 released on July 19th was drafted?

10 **A.** Yes, ma'am, in explaining what we did to try to
11 accommodate to the comments that were made, that is
12 what the purpose of 19 was.

13 **Q.** So the bulk of these statements at least were not
14 written before the first map was -- before the
15 first maps were drawn, right?

16 **A.** The -- I'm not sure I understand what you mean by
17 that.

18 **Q.** Well, you've testified that the criteria that you
19 instructed Dr. Hofeller to follow, that you gave
20 him verbal instructions to follow the Voting Rights
21 Act, the Stephenson and the Strickland opinions and
22 harmonize the Voting Rights Act with the Whole
23 County and that the criteria was put in writing
24 when you issued these public statements.

25 MR. PETERS: Objection.

1 BY MS. EARLS:

2 Q. So I'm trying to understand when the criteria was
3 put into writing.

4 MR. PETERS: Objection.

5 SENATOR RUCHO: That is -- I mean, yes, it
6 was done on the 17th when the criteria was put into
7 writing, but it was evolving all along, otherwise
8 we couldn't have gotten the maps ready to at least
9 make them for public review to get comments from
10 other individuals.

11 BY MS. EARLS:

12 Q. Well, let me ask you: The committee, the
13 Redistricting Committee, did not consider any
14 written document that embodied the criteria that
15 you were following and vote on it in any way?

16 A. To my knowledge, never in the past has that been
17 done in redistricting.

18 Q. But that's not my question. This time around that
19 didn't happen, right?

20 A. Well, it was never done so then it was never --
21 right from the beginning we tried to emulate, since
22 none of it were really engaged in it, and I asked
23 Ms. Churchill to tell us what exactly was done from
24 Day One the best she could remember because we had
25 a very sparse knowledge of what had happened in the

1 past, so she went back into the record and we
2 followed everything and tried to improve it even to
3 a higher level of even public hearings and all of
4 the things that would allow for transparent and
5 openness which part of our goal was.

6 But in reality, you know, you have these
7 conceptual criteria that are in place and then you
8 put it out for review and then when you -- the
9 chairman of the committee generally comes forward,
10 or in many legislative areas, someone comes forward
11 with a bill to present for debate.

12 **Q.** But, Senator, what I am trying to understand is who
13 had an opportunity to have input on the written
14 embodiment of the criteria that you instructed
15 Dr. Hofeller to follow. And I'm correct that, am I
16 not, that no members of the Redistricting Committee
17 other than you and Senator Lewis (sic) had input
18 into the written embodiment of those criteria?

19 **A.** I think it was very clearly when we handed out the
20 Legislator's Guide we would be following the
21 Stephenson criteria because that pretty much laid
22 it out exactly how much you have to implement the
23 redistricting. It was very -- that was valuable to
24 us because that was exactly how you laid out the
25 maps. We just followed it to the letter of the

1 law.

2 **Q.** And am I understanding your testimony correctly
3 that you didn't give Mr. Hofeller -- Dr. Hofeller
4 anything in writing prior to the issuance of these
5 public statements regarding the criteria that they
6 should follow?

7 **A.** Not in writing. I think I made that statement
8 earlier.

9 **Q.** I want to look at the documents that we were
10 reviewing yesterday, some of the memoranda
11 that -- oh, I'm sorry. I do want to follow up on
12 one more question.

13 We were talking about the meetings that you
14 had with Senators Graham, McKissick, Robinson,
15 Mansfield, Jones. Did you convey to Dr. Hofeller
16 anything about those meetings about their concerns,
17 about their interpretations of the legal standards?
18 Did you convey any of that to Dr. Hofeller?

19 **A.** Not regarding their specific meetings, but how any
20 comments that they may have made regarding that as
21 to how it would fit in the criteria and that would
22 have been how our criteria would have been
23 adjusted, if need be.

24 **Q.** Do you recall what you told Dr. Hofeller about
25 their comments?

1 **A.** No, ma'am.

2 **Q.** But you do --

3 **A.** I don't even remember speaking to Dr. Hofeller
4 about those specific meetings that I had.

5 **Q.** Okay. So you don't recall talking to him about
6 those meetings?

7 **A.** Not specifically about my meetings individually
8 with the members of the Senate.

9 **Q.** So then going to the documents that -- some of the
10 legal memoranda, this is Exhibit 58. Why don't you
11 just take a minute and review Deposition
12 Exhibit 58.

13 **A.** I remember this document that I reviewed it. I
14 reviewed it in preparing here.

15 **Q.** This is a memo to you dated June 13, 2010. And do
16 you remember seeing that around about that time?

17 **A.** I don't remember, but I'm assuming it was there and
18 it's part of the record and part of the submission
19 also, I'm sure.

20 **Q.** Do you know -- did you provide this to
21 Dr. Hofeller?

22 **A.** Not specifically, no.

23 These were questions that were submitted to
24 Erika who -- you do need to understand that when
25 Mr. Gilkeson left, the level of knowledge in regard

1 to redistricting diminished very drastically, and I
2 think Erika was the only one that had experience
3 there other than Mr. Cohen, but Mr. Cohen was not
4 assigned to redistricting so that left Erika as the
5 only person there. And apparently, she was so busy
6 she handed it over to Walker Reagan, and I don't
7 know if Mr. Walker Reagan has any knowledge on
8 redistricting, and I'm not sure who did this for
9 him and how he went about answering the questions.

10 **Q.** And previously we looked at Exhibit 57, the first
11 page. Can you get that back in front of you,
12 please.

13 Attached to Exhibit 57 is a legal
14 memorandum from Robert Orr dated May -- well, he's
15 responding to your letter of May 17th and it's
16 dated June 3rd, 2011. Do you see that?

17 **A.** Uh-huh. Let's see where his -- where his testimony
18 is there or his comments.

19 **Q.** Sure.

20 MR. FARR: It's the first one?

21 MS. EARLS: Yes.

22 MR. FARR: Okay.

23 BY MS. EARLS:

24 **Q.** Do you recall seeing this memorandum during the
25 redistricting process?

1 **A.** That occurred somewhere -- when did he deliver it?

2 Around June 3rd.

3 I'll tell you, Ms. Earls, I'm sure I
4 received it. Did I have a chance to review it at
5 that minute, I don't remember. I know it was part
6 of our record and, you know, reflected accordingly
7 in how we structured and set the criteria as part
8 of one person's comments versus everybody else's.

9 **Q.** And do you know Robert Orr?

10 **A.** Well, yes, ma'am. He was a Supreme Court justice,
11 North Carolina Supreme Court justice, and I know
12 that he ran for political office as governor, and
13 we've met before but not good friends.

14 **Q.** Is he someone you would recognize as having some
15 experience or expertise in Voting Rights law?

16 **A.** I really don't know his background to be able to
17 say that's his expertise.

18 **Q.** And the next memorandum there is -- it's more than
19 halfway through the packet -- dated May 27, 2011.
20 It's titled Responses to Redistricting Questions
21 from Senator Rucho and Representative Lewis from
22 Michael Crowell and Bob Joyce at the UNC School of
23 Government dated May 27, 2011.

24 You're shaking your head.

25 **A.** Tell me what's your question.

1 Q. My question is: Do you remember seeing this
2 document during the redistricting process?

3 A. Yes, ma'am, I remember seeing it. It was a request
4 that I asked Ms. Churchill to provide some
5 individuals that could answer these questions and
6 also present -- I think they presented at the first
7 public hearing on when we were putting together our
8 criteria, and I don't know them and I appreciated
9 the fact that they were willing to offer their
10 suggestions.

11 Q. Are they persons that you would recognize as having
12 some experience and background in Voting Rights
13 law?

14 A. I went on the recommendation of Ms. Churchill
15 because I didn't know their expertise.

16 Q. Was it any significance to you that they're at the
17 UNC School of Government one way or the other?

18 A. No.

19 MR. FARR: We didn't hold that against
20 them.

21 SENATOR RUCHO: No, ma'am. I'm sorry.

22 BY MS. EARLS:

23 Q. So my next question is: Did you provide either of
24 these memoranda, that is, the one from Robert Orr
25 or the one from Michael Crowell and Bob Joyce, did

1 you provide those to Dr. Hofeller during the
2 redistricting process?

3 **A.** Not to my recollection.

4 **Q.** You talked with Mr. Speas in some detail about the
5 persons that were involved with Dr. Hofeller in
6 drawing the maps, including Dale Oldham -- you
7 probably remember the names better than I do. John
8 Morgan.

9 MR. FARR: John Morgan, Joel Raupe, Dale
10 Oldham. I can't remember if there's anybody else.

11 BY MS. EARLS:

12 **Q.** So my question is: You've testified just now about
13 the skills of the legislative staff, but in
14 addition to Erika Churchill, was there anyone else
15 on the legislative staff who had the ability to
16 draw maps?

17 **A.** My recollection is that I know Ms. Churchill was
18 attempting to be prolific or, let's say, qualified
19 to do that with the Maptitude software because this
20 is a change from what we did back in 2001,
21 different program, and I knew that -- at least I
22 was made aware of the fact that each of the members
23 on Ms. Churchill's team had gone and taken a course
24 to become proficient at it, but it apparently
25 requires a lot of practice to become proficient at

1 it to know how each of the -- each of it works.

2 **Q.** Well, how did you know that they didn't have the
3 sufficiently proficient skills to be able to draw
4 maps?

5 **A.** I asked.

6 **Q.** So they told you --

7 **A.** They said they had the course but they had work to
8 do as far as become proficient at it. You know,
9 it's -- it's a matter of saying, you know, yeah, I
10 know the first time I ever used a computer, I know
11 how to turn it on and I know that's a mouse, but
12 there's a lot of parts of it that you have to
13 understand to make it work, and I'm sure that would
14 have been beneficial at the time to be a value.

15 **Q.** You testified about the meeting that you went to
16 with the National Conference of State Legislators
17 in Maryland, I believe you said.

18 **A.** Yes, ma'am.

19 **Q.** And the members of the General Assembly legislative
20 staff also went to that meeting.

21 **A.** Yes, ma'am.

22 **Q.** And that was -- there was training opportunities
23 concerning redistricting law as well as the
24 mechanics of using Maptitude software available
25 there as well, right?

1 **A.** I participated in the course with them, or many of
2 them, on understanding the process on
3 redistricting.

4 I didn't participate in the computer
5 utilization, so I don't know if any of the others
6 participated in that or whether it was available at
7 that particular course.

8 **Q.** And so am I understanding, then, that your reason
9 for not using the legislative staff to draw these
10 maps is because you didn't think they were
11 sufficiently proficient in using Maptitude?

12 MR. PETERS: Objection.

13 MR. FARR: Objection.

14 SENATOR RUCHO: I had a responsibility to
15 get it finished and I needed to make sure that I
16 had the people that were most competent to do it in
17 a very quick manner.

18 And you saw the short timeframe we had
19 because we had to wait for the budget to be
20 finished before we could really start moving these
21 maps forward. The budget was our priority.

22 And so I had a very short timeframe to get
23 this thing before the General Assembly so we could
24 submit it in a time that would have allowed the
25 Department of Justice to review it and therefore

1 get our pre-clearance approval and hopefully
2 continue on, and if it turned out we didn't get
3 pre-clearance approval, we had to have a timeframe
4 that we would have been able to adjust whatever the
5 corrections would be, but, thank goodness, they
6 thought our map was excellent and therefore chose
7 to do that, and that worked out well as far as
8 keeping our 2011 -- excuse me -- 2012 election
9 cycle on schedule.

10 BY MS. EARLS:

11 Q. Is there any other reason why you didn't use the
12 legislative staff for redistricting?

13 A. Well, we did use them for redistricting, just not
14 map drawing.

15 Q. Any other reason why you didn't use them for map
16 drawing?

17 A. Primarily because they were busy with a lot of
18 other parts of the job that Ms. Churchill had
19 because many of them -- this was not a dedicated
20 group of individuals. Each of them had additional
21 responsibilities that Walker Reagan assigned to
22 them because they weren't just all dedicated to
23 redistricting, especially during the time frame
24 we're talking because that was budget time, and
25 there was a lot of -- there was a lot of effort of

1 reaching out to them to participate in other
2 committees that they were assigned to, including
3 Ms. Churchill. She was stretched out pretty
4 significantly.

5 **Q.** I want to make sure I understand your view of the
6 legal standards and instructions that you gave to
7 Dr. Hofeller. And you've mentioned -- you've
8 mentioned compliance with the Voting Rights Act,
9 Strickland, Stephenson criteria, Whole County
10 Provision. I can't find anywhere in the written
11 memos that you provided that capture your criteria
12 and you haven't mentioned today that compliance
13 with Shaw versus Reno was one of the criteria that
14 you were concerned about.

15 **A.** I'm not an attorney and would probably not have
16 understood completely Shaw versus Reno. I focused
17 on the ones that I remembered in the process of
18 trying to do that. I don't know what Shaw versus
19 Reno, how it would be explained, I guess is
20 probably, what does it mean.

21 **Q.** So as you sit here right now today, if I use the
22 word racial gerrymandering instead of Shaw versus
23 Reno, does that --

24 **A.** I remember in the Legislator's Guide that is one
25 part of it, and I can say that I can visualize

1 maybe Shaw versus Reno was in there, but as far as
2 following the criteria that was set out with the
3 blending or harmonization of the Voting Rights Act
4 with Stephenson, the Strickland decision, the
5 majority-minority requirements that are there
6 before us and following the federal and state law,
7 that was the core of our -- you know, of our -- of
8 the criteria.

9 If we followed the Stephenson decision and
10 the legislative maps, we would be moving forward
11 and then recognizing that we did need to get
12 pre-clearance, and that was important to us.

13 **Q.** Did I also understand that you would be complying
14 with compactness as long as you complied with the
15 Whole County Provision?

16 **A.** Yes, ma'am.

17 MR. FARR: Objection.

18 Go ahead.

19 SENATOR RUCHO: Yes, ma'am.

20 BY MS. EARLS:

21 **Q.** So if you're looking at the shape of the Senate
22 districts in Mecklenburg county, for example, that
23 are wholly contained within a single county, is it
24 your testimony, then, that you didn't -- you don't
25 think there's any requirement to keep those

1 districts within Mecklenburg county geographically
2 compact?

3 MR. PETERS: Objection.

4 MR. FARR: Objection.

5 SENATOR RUCHO: We felt we were following
6 the Stephenson decision and all of the criteria I
7 alluded to you on, and then recognizing that in
8 Mecklenburg county it was important to us to have,
9 as your map had, the majority-minority status of
10 50 percent plus so that it would preclude the state
11 from having to face a lawsuit under Section 2 of
12 the Voting Rights Act.

13 BY MS. EARLS:

14 Q. Do you know if there's ever been a successful
15 Section 2 lawsuit in Mecklenburg county?

16 A. No, ma'am.

17 Q. So you're not aware of any successful Section 2
18 lawsuit in Mecklenburg county since 1986 when the
19 Gingles decision came down?

20 A. No, ma'am.

21 Q. Am I understanding, then, that you did not -- well,
22 let's talk about the data that was available to you
23 during the redistricting process, and I'll start
24 with data about the compactness of districts.

25 How familiar are you with the Maptitude

1 software?

2 A. Not at all.

3 Q. So you've never used it?

4 A. No.

5 Q. Have you ever seen it on the computer screen?

6 A. Yes, ma'am.

7 Q. Did you ever use the terminal that was at the -- we

8 heard testimony yesterday about a separate laptop

9 or terminal that was set up in an office between

10 two offices that didn't have a number. And did you

11 ever use that terminal to look at redistricting

12 plans?

13 A. No, ma'am, I never did.

14 Q. So all of your review using the computer of

15 redistricting plans was done with Dr. Hofeller?

16 A. Or one of the other people that drew maps.

17 Q. Are you aware of the various compactness measures

18 that software can produce for a district?

19 A. Up until just recently I never knew it could do

20 compactness, but also the fact there are many tests

21 for compactness and there's no right one and they

22 lead to many types of different answers and

23 therefore didn't seem like it was a relevant way of

24 measuring it.

25 Q. You talked earlier about Congressional District 1,

1 and I want to show you -- I thought I had another
2 copy. I only have one copy, but I don't -- I'm
3 happy to share it.

4 I want to show him an e-mail that has a
5 case attached to it.

6 MR. FARR: Cromartie case?

7 MS. EARLS: Yes.

8 (WHEREUPON, Exhibit 212 was marked for
9 identification.)

10 BY MS. EARLS:

11 Q. You're looking at a document that's been marked as
12 Exhibit 212, and I believe you earlier testified
13 that you were interested in or that you were aware
14 that Congressional District 1 had previously been
15 determined to be sufficiently compact, and I just
16 want to ask you if that e-mail that's the first
17 couple of pages of Exhibit 212, if that represents
18 your request and the answer that you received
19 regarding that.

20 A. Well, the request was made.

21 Q. And actually, if you look at page 2 of that
22 document.

23 A. Again, I was looking at a lot of papers. I can't
24 say that I looked specifically, but apparently it
25 was validated.

1 Q. Right, but my question is: Does page 2, that's the
2 request you made for information about the First
3 Congressional District and the Cromartie decision.
4 It's a memo -- I'm just asking is that the request
5 you made?

6 A. Yes, ma'am, I'm assuming it is.

7 Q. And then the first page shows that they referred
8 you to the 2000 Cromartie decision.

9 A. (Witness nodding head up and down.)

10 MR. PETERS: You need to answer.

11 SENATOR RUCHO: Yes. I apologize.

12 BY MS. EARLS:

13 Q. Did you actually -- do you recall if you actually
14 read that opinion?

15 A. I'm not sure, not being a lawyer, that it would
16 make a world of difference. I would probably go on
17 the fact that Mr. Cohen probably said something to
18 the effect, but I can't be sure who gave me that.

19 Q. Well, the opinion talks at some length about the
20 various compactness scores and recites what the
21 compactness scores were for the First Congressional
22 District, and I'm just trying to understand what
23 role, if any, your understanding of these
24 compactness scores play in the redistricting
25 process. And it sounds from what you said before

1 that, in fact, they really didn't, you didn't look
2 at them, they didn't really influence them at all.

3 **A.** If we followed the Stephenson criteria as it was
4 established by the North Carolina Supreme Court and
5 then the U.S. Supreme Court, we felt we had
6 achieved compactness if you're talking about it in
7 that manner.

8 **Q.** So you didn't think it was necessary to look at the
9 compactness scores of districts relative to --

10 **A.** Up until just recently I didn't know the software
11 had that ability. I think it was either yesterday
12 or today or sometime just recently I heard that it
13 does have the ability to one particular measure on
14 compactness for the district, but there apparently
15 are many with inconsistencies.

16 **Q.** So going back to the data that was made available
17 to you, do you know what election returns or voting
18 registration data was on Dr. Hofeller's -- in
19 Dr. Hofeller's software?

20 **A.** In working with Mr. Frey, I asked that all of the
21 election returns for general elections going from I
22 believe it's 2002 -- well, not 2002. Yeah, 2002 as
23 many of them that occurred in this time period and
24 Mr. Frey was able to gather all that information.

25 Apparently there were no -- there was a

1 shortage of space, and there's a term that it
2 wouldn't accept all of them, but the lion share of
3 all of the election returns were on the state
4 computer and I have to assume that's what
5 Mr. Hofeller moved onto his, but I imagine it would
6 be just statewide elections.

7 **Q.** And do you know if he had data regarding election
8 returns at any level below the precinct level?

9 **MR. FARR:** Objection.

10 **SENATOR RUCHO:** You need to ask
11 Dr. Hofeller that question.

12 **BY MS. EARLS:**

13 **Q.** So you don't -- well, let me ask you this: You
14 know the difference between a census block and a
15 VTD?

16 **A.** I do understand that when the information comes
17 from Census, the VTDs are there but it breaks it
18 down into census blocks.

19 **Q.** Do you know whether the election return data which
20 shows you how voters voted whether that data is
21 available at the census block level?

22 **A.** I don't know the answer to that.

23 **Q.** What about voter registration data, do you know
24 anything about the voter registration data that
25 Dr. Hofeller had?

1 **A.** No, ma'am.

2 **Q.** Then keeping on the theme of data, let's look at
3 the -- what information you had about past
4 elections, and yesterday we were looking at some of
5 this information for the past House races. I want
6 to -- I don't know, it's probably not in front of
7 you so I have what is Exhibit 82.

8 MR. FARR: We stipulated all of that stuff
9 was in front of him. If you want to ask him about
10 that individual is fine.

11 SENATOR RUCHO: I'm sorry, I didn't hear
12 what you said.

13 MR. FARR: Nothing. She wants to ask you
14 questions.

15 SENATOR RUCHO: Okay. All right.

16 BY MS. EARLS:

17 **Q.** Well, really I just wanted to make sure that you
18 had it before you were ultimately voting on the
19 redistricting plans that were enacted.

20 **A.** To the best of my recollection, all of this was
21 requested by Representative Lewis and myself and it
22 was difficult in compiling because of the long
23 period of time, but, yes, this was all part of the
24 record.

25 **Q.** And you received it before the plans were enacted?

1 **A.** I would say to you that it was received before we
2 enacted the plans, so it's part of the record, yes,
3 as best I can tell.

4 **Q.** So do you know how many African American members
5 there are in the State Senate right now elected in
6 2010?

7 **A.** I believe there's seven right now.

8 **Q.** And you know, don't you, that none of them were
9 elected in districts that were majority black
10 according to the 2010 Census?

11 **A.** I need to look back and see what the percentages
12 were, but that may be accurate.

13 **Q.** So let's then talk a little bit about your
14 understanding of racially polarized voting.

15 You testified that you had in the record
16 information that there was racially polarized
17 voting in North Carolina. Do you think it's
18 important to know something about the level of
19 racially polarized voting?

20 MR. FARR: Objection.

21 You can answer.

22 SENATOR RUCHO: As part of the record
23 building on this subject, your testimony was that
24 it exists. Your expert testified that it exists
25 through the report that you submitted to us. I

1 asked Mr. Joyner from the NAACP during the public
2 hearing that if indeed racially polarized voting
3 existed and he said yes, and then Dr. Brunell
4 validated Mr. Block or Dr. Block's record and
5 apparently felt that there was racially polarized
6 voting in each of the districts that had VRA
7 districts in it and then I think all of the other
8 urban areas that were in.

9 BY MS. EARLS:

10 Q. So your understanding of racially polarized voting,
11 it was sufficient for you that there was testimony
12 that it exists?

13 MR. FARR: Objection.

14 SENATOR RUCHO: Since that was -- I would
15 just say to you yes.

16 BY MS. EARLS:

17 Q. And is it your belief that racially polarized
18 voting is the same throughout North Carolina?

19 A. I don't know the answer to that question.

20 Q. And you didn't think it was important to know the
21 answer to that question in order to decide where
22 you needed to draw majority black districts?

23 MR. FARR: Objection.

24 SENATOR RUCHO: I will say to you that the
25 evidence was that it existed, and that is, you

1 know, what we had as far as our record is
2 concerned, and we wanted to make sure that we did
3 succeed in getting Department of Justice
4 pre-clearance and we did so in a very expedited
5 manner and apparently we were correct in that
6 judgment.

7 BY MS. EARLS:

8 Q. Yesterday Representative Lewis testified that he
9 thought that statewide election returns were the
10 only ones important to analyzing racially polarized
11 voting. Do you agree with that?

12 MR. FARR: Objection.

13 MR. PETERS: Objection.

14 SENATOR RUCHO: Best I can remember, the
15 statewide gives you the most realistic picture of
16 it. You know, there's so many inconsistencies on
17 individual races. They may be the same district,
18 they may not be the same. There's no way of
19 measuring. They could be different.

20 BY MS. EARLS:

21 Q. Let's look at Exhibit 189. I'm sorry, not 189.

22 MR. FARR: Excuse me for a second.

23 (Discussion held off the record.)

24 BY MS. EARLS:

25 Q. I want Exhibit 199.

1 MR. SPEAS: If it was a snake, it would bite
2 you.

3 BY MS. EARLS:

4 Q. These are Rucho Senate VRA districts.

5 MR. SPEAS: First page.

6 SENATOR RUCHO: Yes, ma'am.

7 BY MS. EARLS:

8 Q. Do you recall when Dr. Hofeller first shared with
9 you a map of Senate districts, redrawn Senate
10 districts?

11 A. Not when he first shared it, no, ma'am.

12 Q. Can you give me a sense of how much in advance of
13 this map being made public, that is, was it within
14 a week, was it within two months?

15 A. I don't recall that timeframe.

16 (WHEREUPON, Exhibit 213 was marked for
17 identification.)

18 BY MS. EARLS:

19 Q. So the court reporter has handed you what's been
20 marked as Exhibit 213. Am I correct that's a
21 document that has one sheet of paper on the top
22 that has district numbers and percentages and then
23 a map that says NC Senate April 22?

24 A. Yes, ma'am, I see it before me, and I'm not sure I
25 know where it came from.

1 Q. Have you ever seen it before?

2 A. No, ma'am, not that I can remember.

3 Q. Then I'll ask you to also take a look at what's
4 been marked as Exhibit 214.

5 (WHEREUPON, Exhibit 214 was marked for
6 identification.)

7 BY MS. EARLS:

8 Q. And that's a map that says NC Senate May 13. Have
9 you seen that map before?

10 A. It looks similar to our enacted map, but I don't
11 know if I've seen it, this picture.

12 MR. FARR: Excuse me a minute.

13 (Discussion held off the record.)

14 MS. EARLS: I think we can then look at
15 Exhibit 215.

16 (WHEREUPON, Exhibit 215 was marked for
17 identification.)

18 BY MS. EARLS:

19 Q. And can you just read for me the title of the map
20 that's part of Exhibit 215.

21 A. North Carolina Senate May 23, 3 -- I don't know
22 what that -- 3 NE No SE.

23 Q. And have you ever seen that map?

24 A. It looks similar to the enacted map.

25 Q. Do you recall seeing that iteration or that version

1 of a district map at any point?

2 **A.** I've seen a lot of them. I can't say specifically
3 that I saw this one. There are consistencies in
4 regard to what this map is and what the enacted map
5 is, but I can't say specifically I saw this one.

6 **Q.** Let's just look at one more. That's Exhibit 216.
7 (WHEREUPON, Exhibit 216 was marked for
8 identification.)

9 BY MS. EARLS:

10 **Q.** And can you tell me what that is.

11 **A.** That title is NC Sen 3 NE with SE Black.

12 **Q.** Do you know what that title refers to?

13 **A.** I don't remember seeing the map as it is here
14 before me, so I'm not sure. I would be just
15 guessing.

16 **Q.** Can you give me a general idea of how you did work
17 with Dr. Hofeller once he started drawing maps.

18 **A.** Once we did the -- just one second. Once we did
19 the groupings, then we moved onto where we could
20 work with the VRA districts as requested or
21 required of us.

22 **Q.** So how did you -- did he bring you a map that
23 showed the groupings or you went to his office?

24 **A.** Well, the groupings were -- that was a calculation
25 of putting pieces together, whichever counties that

1 approached or county combinations that approached
2 the most ideal number for two, three or four
3 counties is how that was done.

4 **Q.** You're talking now essentially a mathematical
5 calculation?

6 **A.** When you put counties together.

7 **Q.** And is there a piece of paper that explains what
8 those were?

9 **A.** I think Mr. Cohen put out or it may even be in the
10 Legislator's Guide somewhere there is a listing of
11 where one county, I think, was in the Senate was
12 190 and 433 and the two county would be twice that
13 and the three county.

14 **Q.** That's what you're referring to --

15 **A.** That's correct.

16 **Q.** -- as having done the county groupings?

17 **A.** That's correct.

18 **Q.** Thank you. So then once you had that, then what
19 happened?

20 **A.** Then we would work with blending in the Voting
21 Rights Act district, following the criteria that
22 has been established, and then from that point,
23 once we achieved that level, then we would be doing
24 the non-VRA districts.

25 **Q.** When you say we would be doing them, were you and

1 he sitting at the computer together drawing the
2 districts or would he produce the map and bring it
3 to you?

4 **A.** He would probably, in essence, put some of the
5 factors in there and say, hey, this is what we're
6 looking at and what do you think about this and
7 that and see how it worked and if it achieved the
8 result of complying with the legal criteria of
9 Stephenson.

10 **Q.** Were most of your discussions with him about the
11 maps in person, face-to-face or was it over the
12 phone? How did that happen?

13 **A.** Well, most of them were in person because, you
14 know, you visualize it.

15 **Q.** When -- going back, then, to Exhibit 199, which is
16 the smaller map that's the House -- I'm sorry --
17 Senate VRA districts, when you first saw this map,
18 were these the only districts you saw or was the
19 rest of the map filled in?

20 **A.** There was probably some sketched out other
21 non-VRAs. I mean, you have to do it altogether to
22 make sure everything fits. And then this was the
23 part that we delivered for public review and
24 waiting for public comment and seeing if we needed
25 to alter or change any of the districts.

1 But you know, these were the districts that
2 we felt when we brought them forward that best met
3 the criteria by Stephenson, and also all of the
4 record that is there, including all the evidence
5 that came down from racial polarization. You know,
6 I'm not an expert. I go on what they tell me as
7 far as, you know, each of the -- from your input
8 and from Mr. Block's, from Dr. --

9 Q. Brunell?

10 A. -- Brunell, Dr. Brunell. So understand that when
11 not being an attorney, not being an expert on
12 racial polarization, not being a statistician, I go
13 on the experts giving me the best advice as to how
14 we would need to comply with the criteria that
15 Stephenson lays out.

16 And to be candid with you, I'm not sure I
17 could add any more to the fact that that's what I
18 depended on along with Representative Lewis to
19 establish the criteria that we felt would be
20 important to draw fair and legal maps to be able to
21 get pre-clearance approval and to move this cycle
22 forward.

23 Q. I understand -- I mean, you said several times
24 you're not an expert on racial polarization but you
25 have run for public office numerous times, correct?

1 **A.** That does not make me an expert for racial
2 polarization.

3 **Q.** But you have run for public office?

4 **A.** Yes, ma'am.

5 **Q.** And in the course of running campaigns, you do look
6 at election returns?

7 **A.** You look at results.

8 **Q.** Right, election results.

9 **A.** Yes.

10 **Q.** You do have interactions with voters, correct, in
11 the course of your duties as a senator?

12 **A.** Constituent services.

13 **Q.** And is it your view -- do you have any sense of
14 whether white voters in North Carolina, whether any
15 white voters are willing to vote for a black
16 candidate?

17 **A.** To answer your question, I go on what the experts
18 have told me about that, especially since I was --
19 you know, my responsibility was to come forward
20 with a Senate map, Congressional map and then
21 working with Representative Lewis. We use the
22 expert advice as part of the record of how to work
23 this. I mean, I'm not going to question you,
24 Mr. Block, Dr. Block, Mr. Funell (sic), you're all
25 the experts, and if you say it existed and if it

1 exists, then we follow what would be expected of us
2 under the law.

3 **Q.** So going back to these districts, the Senate VRA
4 districts, can you tell me which of these districts
5 you drew or you believe were justified by Section 5
6 of the Voting Rights Act and which ones you believe
7 were justified by Section 2 of the Voting Rights
8 Act?

9 MR. FARR: Objection.

10 SENATOR RUCHO: Well, I would assume that
11 Section 5 of the Voting Rights Act would be
12 impacted by Guilford, by the 20 in Granville, by
13 number 4, number 3, number 5. It would be -- well,
14 not so much in this one, but in reality, it would
15 be number 21 with Hoke county.

16 And then Section 2 would be all the others
17 because they would be every other county in the
18 state who would have it except for the ones who are
19 Section 5 which are 40 of them.

20 BY MS. EARLS:

21 **Q.** And what's your understanding of what Section 5
22 requires?

23 **A.** Well, of course, Section 5 is pre-clearance from
24 the Department of Justice. And one of them was --
25 let me remember the criteria, if I may.

1 Retrogression is one of them and there was another
2 one and I've forgotten. I studied this a long time
3 ago. And there is one other criteria to determine
4 whether we met -- we received Section 5 compliance
5 and it's discrimination but there's another term
6 for it.

7 **Q.** And in determining -- in figuring out -- when
8 you're looking at these districts that are covered
9 by Section 5 and trying to decide what you have to
10 do as a member of the legislature to avoid -- to
11 get pre-clearance and to comply with Section 5 and
12 to avoid retrogression, do you -- what was your
13 understanding of what the benchmark was for those
14 districts?

15 **A.** I'll go back to what our criteria was. It was
16 harmonization of the Voting Rights Act with
17 Stephenson, with Strickland, 50 percent plus, and I
18 think that's it.

19 **Q.** Well, let me ask -- or let me ask it slightly
20 different. Let's look at the Congressional
21 districts.

22 MR. FARR: I just want to interject.
23 We're having a legal argument here, and I'm going
24 to let this go on a little bit longer, but we have
25 a disagreement on the law. We have a lawyer

1 arguing with a non-lawyer about what the law means.

2 MS. EARLS: No. I'm asking him his
3 understanding which is completely legitimate as a
4 person who instructed the map drawer.

5 BY MS. EARLS:

6 Q. So let's look at the Congressional districts.

7 A. Can we take a break?

8 Q. Sure.

9 A. This would be a good time.

10 (Brief Recess: 3:00 to 3:10 p.m.)

11 BY MS. EARLS:

12 Q. Before we broke, I was going to ask you about the
13 Congressional districts, and I'll try to keep this
14 fairly short, but Congressional District 1 in the
15 prior plan was 47.76 percent black voting age
16 population using the 2010 Census data and in the
17 enacted plan you increased it to 52.65 percent
18 black voting age population, and I'm trying to
19 understand was it your view that that increase in
20 black voting age population was necessary to comply
21 with Section 5 of the Voting Rights Act?

22 MR. FARR: Objection.

23 SENATOR RUCHO: As best I can recollect,
24 okay, that was Section 2. I think it was a Section
25 2 case. And -- do we have a map of that?

1 BY MS. EARLS:

2 Q. Yes. That would be Exhibit 190. If you look at
3 the fourth page of that exhibit, I believe those
4 would be the enacted plans and I think it's right
5 there.

6 MR. FARR: This.

7 BY MS. EARLS:

8 Q. Congressional. It's 190, looks like this. You can
9 take a look at this.

10 A. As best I can remember, that is -- it's got
11 Section 5 in there and Section 2 in that district,
12 and our goal was to bring it up to the population
13 it was missing of -- roughly missing 97,000 voters.
14 We went into the Durham area to help keep that
15 stable over the long period of time to minimize the
16 underpopulation, and under that circumstances it
17 was felt that we needed to restore that to -- under
18 the Strickland decision to a 50 percent plus.

19 Q. And you had discussions with Representative
20 Butterfield about that, am I right?

21 A. We discussed a number of things about it. I'm not
22 sure we specifically got into the percentages. We
23 told them about the difference in the population
24 and we needed to get that restored under the one
25 person, one vote.

1 **Q.** I am going to ask the court reporter to mark this
2 document as Exhibit 217.

3 (WHEREUPON, Exhibit 217 was marked for
4 identification.)

5 BY MS. EARLS:

6 **Q.** Do you recognize Exhibit 217 as a letter from -- a
7 letter from G.K. Butterfield dated July 22, 2011,
8 that was introduced in the record at a public
9 hearing by Senator Ed Jones?

10 **A.** Yes, ma'am.

11 **Q.** And do you recall seeing this letter during the
12 redistricting process?

13 **A.** Yes, ma'am, we took that into consideration.

14 **Q.** And do you see -- if you look at the top of page 2
15 where he talks about the fact that it's not -- that
16 he can maintain the historic rural nature of that
17 district without going into an urban area and still
18 comply with the Voting Rights Act?

19 **A.** I read what it says, and part of our decision in
20 the process was that his district over the last ten
21 years was -- many of the counties were either slow
22 growth or no growth, and our effort was to try to
23 maintain and not be -- not over time lose the one
24 person, one vote requirement of making sure that
25 the population stays similar to the rest, and

1 that's why it went into Durham county, initially
2 into Wake and then into Durham.

3 **Q.** But he's suggesting that numerically it's possible
4 to comply -- to draw a district that doesn't
5 violate the general redistricting principles even
6 those there's a large population deficit, he calls
7 it, that District 1 can be preserved without going
8 into the urban areas.

9 Are you saying you just didn't think that
10 was right?

11 **MR. FARR:** Objection.

12 **SENATOR RUCHO:** We were concerned about
13 minimizing the underpopulation of that district so
14 we could stay, you know, in close proximity with
15 one person, one vote, zero population differential.

16 **BY MS. EARLS:**

17 **Q.** When you say you were concerned about that --

18 **A.** Over time.

19 **Q.** Going forward, so the decade from 2011 to 2021?

20 **A.** We were -- we were trying to maintain a way of
21 doing so.

22 And secondly, if I remember correctly, this
23 precedent of going into Durham had been done in a
24 previous map and it was something that was done a
25 number of years back. I don't remember the exact

1 period of time, but it did and we felt that that
2 was a precedent that was there and all of the --
3 all of the factors dealing with our criteria were
4 met, and I'm not sure how else to explain that.

5 **Q.** Let's talk about District 12 for just a moment.
6 Congressional District 12 went from 44.31 percent
7 in the prior plan to 50.66 percent black voting age
8 population roughly in the new plan.

9 And did you consider that was necessary to
10 comply with the Voting Rights Act?

11 **A.** I'll repeat what I talked to Mr. Speas earlier this
12 morning, and that was the district we inherited,
13 our goal was to get pre-clearance done by the
14 Justice Department. This map -- this District 12
15 has had at least 20 years of approval by the
16 Justice Department. We kept the same concept in
17 there. There was a population, I think, overage of
18 about 2,000 or some sort.

19 And secondly, this is -- it is in areas of
20 Section 2 and Section 5, but this map was designed
21 for its original purpose and that was to be a
22 strong performing democratic district.

23 **Q.** So ultimately you're saying that you drew
24 District 12 the way it is to make it a strong
25 democratic performing district?

1 MR. PETERS: Objection.

2 SENATOR RUCHO: That was the original
3 intent of what was approved by the court to my
4 recollection.

5 BY MS. EARLS:

6 Q. I want what your intent was.

7 A. Our intent was passage by the Department of
8 Justice.

9 Q. You felt it needed to go above 50.66 percent to be
10 cleared by the Department of Justice?

11 MR. FARR: Objection.

12 SENATOR RUCHO: No. What we're saying is
13 that when this map was drawn and it was -- and
14 Mr. Hofeller was giving directions on this, his
15 responsibility was to get it to an ideal
16 population, zero deviation, secondly, to use whole
17 VTDs wherever possible and, thirdly, to use the
18 presidential election in 2008 as the measure of
19 adding people to this district.

20 BY MS. EARLS:

21 Q. As a measure of partisan affiliation?

22 A. No, not partisan affiliation. The vote during the
23 presidential election.

24 Q. So how people vote in terms of which party they
25 support?

1 **A.** No. How you voted on the election.

2 **Q.** What I'm trying to understand is did you consider
3 that -- what I am trying to understand is you're
4 saying you instructed him to use the 2008 Obama
5 election --

6 **A.** Results.

7 **Q.** -- results to indicate what?

8 **A.** In forming the VTDs that are in that -- in that --
9 in the district.

10 **Q.** I see. And you did have conversations with
11 Representative Watt about his district?

12 **A.** Yes.

13 **Q.** And I believe he also sent a letter. I am going to
14 ask the court reporter to court reporter to mark
15 this.

16 (WHEREUPON, Exhibit 218 was marked for
17 identification.)

18 BY MS. EARLS:

19 **Q.** I believe you have been handed a document that has
20 been marked as Exhibit 218.

21 Is that a letter from Representative Watt
22 dated July 8, 2011? I'm really just trying to
23 identify the document.

24 **A.** I want to read it first.

25 Thank you. Yes.

1 Q. Do you recall receiving this letter during the
2 redistricting process?

3 A. Yes. I think it was actually read by Senator
4 Graham.

5 Q. You testified earlier that you drew the Forsyth
6 county District 32 in part based on Representative
7 Watt's statements that Hispanic and African
8 American voters vote together, and this letter in
9 Paragraph B on the first page says that he did not
10 intend to indicate that he had any knowledge of
11 whether African American and Hispanic voters vote
12 together.

13 Did this letter have any impact on your
14 decision about District 32?

15 A. My recollection in discussing with him -- and
16 Mr. Woodcox was in with us at that point -- was
17 that -- was that the white voter -- excuse me --
18 the black voters and the Hispanic voters tended to
19 vote cohesively, and that's what I remember him
20 saying very clearly. Now he may disagree with what
21 you understood, but that is what I remember
22 clearly.

23 Q. But he at least put in writing prior to the passage
24 of the plan that that wasn't what he intended,
25 whatever he said, and you understood he's put in

1 writing that's not what he intended to indicate.

2 **A.** As I alluded to earlier, District Number 12 is what
3 we inherited Congressionally. We followed the
4 criteria I just alluded to you when I told you what
5 we told Dr. Hofeller to make sure that we met zero
6 deviation.

7 **Q.** I'm sorry.

8 MR. FARR: Can he finish.

9 SENATOR RUCHO: Zero deviation. We wanted
10 to keep whole VTDs when we could, and we used
11 President Obama's election results in determining
12 how to fill out those VTDs so it would be a high
13 democratic performance district as what was
14 originally approved by the Supreme Court way back
15 20 years or so.

16 BY MS. EARLS:

17 **Q.** I'm asking you now about Senate District 32 in
18 Forsyth county.

19 **A.** Okay.

20 **Q.** And your testimony earlier today when Mr. Speas was
21 asking you questions was that you considered that a
22 coalition district based on what Representative
23 Watt told you about Hispanic and African American
24 voters voting together.

25 And my question is whether you gave any

1 weight to his written statement here on July 8th
2 before the plan had been enacted that in fact that
3 was not what he intended to suggest?

4 MR. PETERS: Objection to the
5 characterization of what the letter says.

6 BY MS. EARLS:

7 Q. Did you give any weight to Paragraph B in this
8 letter that's Exhibit 218?

9 A. All I can say is that even reading this now,
10 apparently there was similar issues and similar
11 concerns between the African American and Hispanics
12 on the federal level issues and I assume that it
13 would be translated down to the state issues and
14 felt that the coalition district was appropriate
15 based on our criteria.

16 Q. Do you recall Representative Watt telling you that
17 very minor changes to his district would be
18 sufficient to bring it into one person, one vote
19 compliance, specifically switching as few as one or
20 two precincts?

21 A. Yes, he did.

22 Q. Let's move -- I want to ask you a question about
23 Brent Woodcox. You mentioned him a minute ago.

24 What role did he play in the redistricting
25 process?

1 **A.** He was the counsel to the Senate redistricting. He
2 was a staff person, legislative staff person.

3 **Q.** And did he provide advice about -- or what did he
4 do in that role as counsel?

5 **A.** Was involved in a number of the drafting of
6 documents and making sure that letters got out to
7 stakeholders and all of the work that was necessary
8 for this committee to move forward.

9 **Q.** I want to ask you specifically about the public
10 hearing that occurred on the Senate Voting Rights
11 Act -- House and Senate Voting Rights Act
12 districts. You chaired that public hearing, is
13 that correct, you and Representative Lewis?

14 **A.** Okay. What day was it?

15 **Q.** This was the public hearing that was held on the
16 Voting Rights Act districts -- I'm sorry. On
17 June 23, 2011.

18 **A.** Do we have that before us?

19 **Q.** No. I'm just asking if you remember being at
20 that -- if you chaired that hearing and you were
21 there.

22 **A.** And it was the -- was it the Voting Rights Act maps
23 that were put out that day?

24 **Q.** Yes. Well, they were put out a couple days before.
25 The Voting Rights Act districts were released on

1 June 17th and the public hearing was June 23rd.

2 **A.** I assume I was there.

3 **Q.** What do you recall about the public reaction to the
4 Voting Rights Act maps as expressed at that public
5 hearing?

6 **A.** I think most -- the comment that came forward was
7 that people felt that they saw that, okay, and they
8 wanted to see what the rest of the maps look like,
9 but this is the first step that we would have taken
10 following the Stephenson criteria and that was why
11 we did it in this manner so we could get public
12 comment and we were following it just as we were
13 told to in the law.

14 **Q.** Do you recall any public comments at that public
15 hearing opposing the Voting Rights Act districts on
16 the ground that they were packing black voters?

17 **A.** There was a concert of individuals, NAACP, League
18 of Women Voters, and they all seemed to say the
19 same messages almost like it was a canned speech.

20 **Q.** And did you give that any weight in your
21 consideration of the Voting Rights Act?

22 **A.** We considered everything that was discussed there
23 plus any other information we might have gotten
24 over the internet, additional comments.

25 **Q.** The split precincts, we haven't been able to talk

1 about those much, but did you request any
2 documentation of how much it might cost to
3 administer the elections when there are split
4 precincts?

5 **A.** It was requested by me only because it came about
6 from a request of the member of the committee and
7 Ms. Churchill had to spend some time with the Board
8 of Elections, and my best recollection was that
9 when we finally saw a document that is was
10 insignificant.

11 **Q.** That the cost was insignificant?

12 **A.** That is correct.

13 **Q.** I want to go back to Senate District 32. Do you
14 recall having -- this is Senator Garrou's district.
15 Do you recall having an exchange with her on the
16 floor of the Senate regarding that district?

17 **A.** Let's see. Senator Garrou and I probably had
18 exchanges on a number of occasions I think
19 about -- not necessarily related to redistricting.

20 There may have been some comments from her
21 the best I can recollect. There were a number of
22 folks that spoke on the issue.

23 **Q.** What do you recall about their comments on that
24 district?

25 **A.** I guess the biggest one that she felt was the fact

1 that she was in a -- moved into -- let's see --
2 into Senate District 31.

3 **Q.** And do you recall her saying -- her asserting that
4 she was in fact the candidate of choice of African
5 American voters in her current district?

6 **A.** I can't specifically say that I remember her saying
7 that, but it could have been said.

8 **Q.** And similarly, do you recall having an exchange
9 between Senate Minority Leader Nesbitt in the
10 committee about Senate District 32?

11 **A.** I can't remember the specifics.

12 **Q.** Do you recall Senator Nesbitt saying, "but it says
13 here Chairman Rucho also recommends that the
14 current white candidate not be included in the
15 proposed District 32. That doesn't sound like it
16 just happened to me"?

17 **A.** That was designed to be a coalition district, and
18 apparently, from some of the record that Senator
19 Garrou defeated, I guess, a couple of minority
20 candidates over 2006 and 2010 or somewhere in
21 there, a couple of elections that occurred in the
22 primary, and it, I guess, felt it was important to
23 give the people of that district to select the
24 candidate of their choice.

25 **Q.** So does that mean it was your view that Senator

1 Garrou could not be the candidate of choice of
2 African American voters?

3 **A.** That was really up to the people in that district.
4 And we wanted to give it its best effort to have
5 that happen. I'm not sure I can answer that any
6 further.

7 **Q.** Well, I think it's important to know what
8 information you had and what your considerations
9 were there.

10 Do you recall saying, "In a coalition
11 district, we wanted to be sure that the people in
12 that district have an opportunity to choose a
13 candidate of their choice that are of the
14 population in that district"?

15 **MR. FARR:** Is that a quote from the
16 record?

17 **MS. EARLS:** Uh-huh.

18 **SENATOR RUCHO:** Repeat it again, then.

19 **BY MS. EARLS:**

20 **Q.** "In a coalition district, we wanted to be sure that
21 the people in that district have an opportunity to
22 choose a candidate of their choice that are of the
23 population in that district."

24 **A.** I'm not sure I said that specifically, but it could
25 be. I guess what I'm saying is very simply that

1 the people that are in that District 32 now will be
2 able to have a chance to select a candidate of
3 their choice and apparently there are two or three
4 candidates presently running in that district.

5 **Q.** Why did you have to draw Linda Garrou out of that
6 district in order to give them a choice to elect a
7 candidate of their choice?

8 **A.** It was just a matter of where the lines drew.

9 **Q.** It's just an accident that you drew her out of that
10 district?

11 **A.** No, probably not. It was just a matter that would
12 be a better way to handle District 32.

13 **Q.** Would you have felt the same way if she had been
14 black?

15 MR. FARR: Objection. That's a
16 hypothetical.

17 BY MS. EARLS:

18 **Q.** You can answer the question.

19 **A.** If she was an incumbent and she was black, we would
20 not have -- as I mentioned to you before, I told
21 Mr. Hofeller that we would never or not double bunk
22 or make sure that the incumbents were there because
23 of the potential problems that could come from the
24 Department of Justice.

25 **Q.** So you would have left her in District 32?

1 MR. PETERS: Objection.

2 SENATOR RUCHO: If that were the
3 circumstance, yes, I would have.

4 BY MS. EARLS:

5 Q. We talked about the meetings that you had with
6 Representative Watt and Representative Butterfield.
7 Did you have any other meetings with members of
8 Congress about their districts?

9 A. I did. We invited everyone. I think we met with
10 Congressman Price, Congressman McIntyre. I can't
11 remember if Congressman Jones or not came, but I
12 know those first two for sure.

13 Q. Just a moment.

14 Thank you very much. I have no further
15 questions.

16 EXAMINATION

17 BY MR. FARR:

18 Q. Senator Rucho, have you memorized the entire record
19 before the General Assembly to come here and
20 testify today?

21 A. No, sir, that wouldn't be possible.

22 Q. Are there some documents that may relate to the
23 criteria and the opportunities that you gave
24 members of the General Assembly and public to have
25 input on this that have not been produced during

1 this deposition by the plaintiffs?

2 **A.** There's multitude of documents that were alluded to
3 but not presented, yes, sir.

4 **Q.** And is one of those documents the expert report by
5 Ms. Earls' expert Mr. Block, I think his name is?

6 **A.** Yes, sir, we did not have a chance to see that here
7 today.

8 **Q.** And you've been questioned about that, but no one
9 has ever allowed you to review that document today,
10 have they?

11 **A.** That document has been --

12 MR. SPEAS: Objection to the form.

13 BY MR. FARR:

14 **Q.** You've testified about that document, have you not?

15 **A.** I testified in the sense that that was part of our
16 comprehensive, overall record and yet it was
17 discussed today on a couple of occasions and never
18 did get a chance to see a copy of it.

19 **Q.** Do you recall what's in that report sitting here
20 today?

21 **A.** The only thing that I can remember distinctly was
22 the fact that Mr. Block felt that African American
23 candidates have a better opportunity of winning an
24 election in the district with majority-minority
25 status. That's the one I can remember the best I

1 can.

2 **Q.** Sitting here today, do you remember which races
3 Mr. Block analyzed in his report?

4 MR. SPEAS: Object to the form.

5 SENATOR RUCHO: My recollection is that he
6 looked at every election from, was it, 2006, 2008,
7 2010 where a minority candidate and a white
8 candidate would have participated in the election,
9 so I think he covered every single general election
10 up through that period and came out with the result
11 that I described to you.

12 BY MR. FARR:

13 **Q.** Did you rely upon that report in making your
14 decision in formulating the plans that were
15 ultimately enacted?

16 MR. SPEAS: Object to the form.

17 SENATOR RUCHO: Representative Lewis and I
18 both looked at that based on testimony, based on
19 the results that came from Dr. Block and
20 Dr. Brunell.

21 MR. FARR: All right. That's it.

22 FURTHER EXAMINATION

23 BY MR. SPEAS:

24 **Q.** We have five minutes.

25 **A.** Great.

1 **Q.** I'd like to talk to you about racially polarized
2 voting for just a minute. And you discussed --
3 you've been asked about racially polarized voting
4 studies. What do you understand the purpose of
5 those studies to be?

6 **A.** I'm not expert.

7 **Q.** Right. Neither am I.

8 **A.** And the only thing I can go on is the conclusions
9 that come from the experts that say that racially
10 polarized voting still exists today and especially
11 at the time we enacted our maps in North Carolina.

12 **Q.** And do you know whether or not racially polarized
13 voting exists everywhere in the United States?

14 **A.** I don't know the answer to that question.

15 **Q.** And based on your own experience, do you know that
16 there are parts of the state where white citizens
17 are more likely to vote for a black candidate than
18 other parts of the state?

19 MR. PETERS: Objection.

20 SENATOR RUCHO: I don't know the answer to
21 that question.

22 BY MR. SPEAS:

23 **Q.** But you know in Mecklenburg county, for example,
24 that a number of black candidates have won
25 Mecklenburg county as a whole on a regular basis

1 over the years since 1977 that you've been in
2 Mecklenburg county?

3 MR. FARR: Objection.

4 You can answer the question.

5 SENATOR RUCHO: Of course, there are
6 election results, but reality is -- is it
7 Dr. Funell --

8 BY MR. SPEAS:

9 Q. Brunell.

10 A. Brunell, excuse me, mentioned specifically that he
11 has -- and I'm -- he ended up going along with what
12 Dr. Block said that there still is racially
13 polarized voting in Mecklenburg county.

14 Q. So let me ask the question this way, and this will
15 be my last one: When you were serving in your role
16 as chair of the Senate Redistricting Committee, did
17 you determine that racially polarized voting
18 existed across North Carolina without any
19 difference across North Carolina's counties?

20 MR. FARR: Objection.

21 SENATOR RUCHO: I could only go on what
22 was told by the experts to us.

23 BY MR. SPEAS:

24 Q. And that's what you understood from Dr. Brunell?

25 A. Well, Dr. Brunell and there was comments from

1 Dr. Block.

2 **Q.** And you, of course, never had the opportunity to
3 talk to Dr. Brunell I believe you testified.

4 **A.** No, sir.

5 MR. SPEAS: Thank you for coming. There's
6 some outstanding matters that might require us to
7 get back together, but we'll let you know about
8 that.

9 SENATOR RUCHO: Thank you.

10 [SIGNATURE RESERVED]

11 [DEPOSITION CONCLUDED AT 3:41 P.M.]

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1 A C K N O W L E D G E M E N T O F D E P O N E N T

2

3 I, SENATOR ROBERT RUCHO, declare under the

4 penalties of perjury under the State of North

5 Carolina that I have read the foregoing 199 pages,

6 which contain a correct transcription of answers made

7 by me to the questions therein recorded, with the

8 exception(s) and/or addition(s) reflected on the

9 correction sheet attached hereto, if any.

10 Signed this the day of , 2012.

11

12

13

14 SENATOR ROBERT RUCHO

15

16 State of:

17 County of:

18 Subscribed and sworn to before me

19 this day of , 2012.

20

21

22

23 Notary Public

24 My commission expires:

25

ERRATA SHEET

Case Name: NAACP vs. State or North Carolina, et al. and

Margaret Dickson et al. vs. Robert Rucho, et al.

Witness Name: Senator Robert Rucho

Deposition Date: Friday, May 4, 2012

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Signature

Date

STATE OF NORTH CAROLINA)
) C E R T I F I C A T E
COUNTY OF WAKE)

I, DENISE L. MYERS, Court Reporter and
Notary Public, the officer before whom the foregoing
proceeding was conducted, do hereby certify that the
witness(es) whose testimony appears in the foregoing
proceeding were duly sworn by me; that the testimony
of said witness(es) were taken by me to the best of
my ability and thereafter transcribed under my
supervision; and that the foregoing pages, inclusive,
constitute a true and accurate transcription of the
testimony of the witness(es).

I do further certify that I am neither
counsel for, related to, nor employed by any of the
parties to this action, and further, that I am not a
relative or employee of any attorney or counsel
employed by the parties thereof, nor financially or
otherwise interested in the outcome of said action.
This the 13th day of May 2012.

Denise L. Myers
Notary Public 200826100153